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IN THE

Supreme Court of the United States

October Term, 1996

THOMAS A. COUGHLIN, III, as Commissioner of N.Y.S. Department of Correctional Services, and LOUIS F. MANN, as Superintendent of Shawangunk Correctional Facility,

Petitioners,

against

DAVID GRIFFIN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

PETITION FOR A WRIT OF CERTIORARI

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Question Presented

1. Whether the Establishment Clause of the First Amendment to the United States Constitution prohibits a State, in its attempt to address an inmate's history of substance abuse, from conditioning that inmate's eligibility to participate in one of its programs on attendance at self-help group meetings operated independently from the State that use the 12-step method of recovery originally developed by Alcoholics Anonymous.

a. Is the 12-step method, which is self-defined as subject to individual interpretation and belief of choice, equivalent to a religious exercise as a matter of law?

b. May State endorsement of religion, in violation of the second prong of the test enunciated in *Lemon v Kurtzman*, 403 US 602 (1971), be inferred from the State's referral of an inmate to a self-help group using a method that calls on participants to define their beliefs for themselves because that definition may include a belief in God?

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PETITION FOR A WRIT OF CERTIORARI

The petitioners respectfully pray that a writ of certiorari issue to review the order of the New York State Court of Appeals entered in this proceeding on June 11, 1996. The order of the Court of Appeals reversed an order of the Appellate Division, Third Department, entered on May 18, 1995 that affirmed a judgment of the Supreme Court, County of Ulster dismissing the respondent's petition, brought pursuant to New York Civil

Practice Law and Rules (CPLR) Article 78. The court had held that the Department of Correctional Services' requirement that inmate David Griffin attend the prison's Alcohol and Substance Abuse Treatment Program (ASAT) before he could become eligible to participate in the prison's family reunion program violated the inmate's rights under the Establishment Clause of the First Amendment.

Opinions and Orders Below

The order of the Court of Appeals is annexed as Appendix "A." The court's opinion, rendered on June 11, 1996, has not yet been officially or unofficially reported. It is set forth as Appendix "B".

The opinion of the Appellate Division, rendered on May 18, 1995, is reported at 211 AD2d 187, 626 NYS2d 1011 (3d Dept 1995). That decision and order are appended as Appendix "C".

The opinion of the Supreme Court, Ulster County, dated March 18, 1994, is unreported, and is appended as Appendix "D".

Jurisdiction

The order of the Court of Appeals was entered on June 11, 1996. This petition for certiorari is filed within 90 days of June 11, 1996. The Court's jurisdiction to review the case rests upon 28 USC § 1257(a).

Constitutional Provision Involved

United States Constitution Amendment I.

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof * * *

Statement of the Case

While at Shawangunk Correctional Facility in Ulster County, New York, the respondent in this case, David Griffin (hereinafter respondent or inmate), became an active participant in the department's Family Reunion Program. The Alcohol and Substance Abuse Treatment program (ASAT) coordinator at that facility reviewed the inmate's records and found that he needed therapy.[1] He was placed in the facility's ASAT program which utilizes the 12-step approach originated by Alcoholics Anonymous (AA) and requires attendance at meetings of a self-help group, including groups such as AA or Narcotics Anonymous (NA).[2]

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[1]The inmate admits that he used heroin from June, 1955 until about March, 1968.

[2]The ASAT program is operated by the State based on the 12-step method. While a requirement of the program includes the inmate's participation in a self-help group such as AA or NA, this portion of the program is not operated by the State. It is this portion of the program that is our focus here. The State- operated part of the ASAT program is currently undergoing a periodic review and revision. The result of this process may resolve some of the objections expressed by the Court of Appeals to the ASAT manual as it was written at the time this appeal was before it.

Respondent filed an inmate grievance in which he complained that the ASAT program has a "religious/spiritual foundation" and asked to be removed from it as a condition to his participation in the Family Reunion Program. He claimed that he does not believe in or follow any religion and that the requirement that he attend the program violates his rights under the First Amendment of the U.S. Constitution.

The Superintendent denied the grievance on the ground that the inmate was free to choose whether to participate in the ASAT program, but must address his history of substance abuse in order to participate in the Family Reunion Program. He noted that at that time no other program was available. On administrative appeal, the determination was sustained and the grievance was denied as without merit, citing Departmental of Correctional Services Directive #4500, which provides that an inmate who abused drugs prior to incarceration will have to participate successfully in a drug education program in order to be eligible for family reunion visits.

Appearing pro se, the inmate brought a petition pursuant to CPLR Article 78 to challenge the administrative decision. He asked the court for a judgment ordering the discontinuance of enforcement of the requirement against him.

The Supreme Court denied the petition and dismissed the proceeding. The court found that the program was not religious and did not promote or inhibit any specific religion or religious principles. The court concluded that the requirement has a secular purpose and violates neither the Establishment Clause nor the Free Exercise Clause. The court also held that the blanket allegations in the petition were insufficient to support the inmate's claim for relief (68a).

In a unanimous decision, the Appellate Division affirmed the judgment of the Supreme Court. The court noted at the outset that the petition was "devoid of any details or specifics of what occurs at meetings or how the sessions are conducted with a religious orientation, and no affidavits or other documents were offered in support of his assertion." (58a). The court also wrote that while the inmate cited many references to "God" and "Higher Power" and to "prayer and meditation" in the AA literature, no specifics were given as to the program the inmate was to attend to support the claim that religion was being forced upon him (62a).[3]

While acknowledging that the Establishment Clause prohibits not only governmental favoritism among religions, but between religion and non-religion, the Appellate Division held that the use of the AA 12-step method as part of the ASAT program did not, by itself, establish an Establishment Clause violation, and that further allegations would be necessary in order to establish that the particular way in which the ASAT program was run made it a religious exercise (62a; 65a-66a).

The Court of Appeals reversed, with two judges dissenting. The majority equated the AA 12-step method utilized in the ASAT curriculum with religious oriented practices and held that the Establishment Clause bars the State from depriving an atheist or agnostic inmate of eligibility in the family reunion program for refusing to participate in ASAT. The Court found that although the inmate's participation in the ASAT program was not required, and the inmate had no entitlement to participate in the family reunion program, nevertheless the condition-

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[3]While a record has not been developed regarding the specific program Mr. Griffin attended, it appears that he never reached the point where he went to AA meetings (72a).

ing of his eligibility for the latter program on attendance at the former was coerced attendance forbidden by the Establishment Clause (3a, 16a, 18a-19a). The Court suggested that the program would be constitutional if conducted on a voluntary basis, if the 12-step portion were part of an alternative treatment program, or if the program were constructed in a way that offered a secular alternative to the AA component (4a).

In reaching its conclusion that the 12 steps were a religious exercise, the Court of Appeals viewed the dominant theme of AA to be "unequivocally religious" and characterized the AA literature as "reflecting the traditional elements common to most theistic religions" (9a). It concluded "beyond peradventure that doctrinally and as actually practiced in the 12-step methodology, adherence to the AA fellowship entails engagement in religious activity and religious proselytization" (11a-12a). Although the AA literature explains that belief in a power greater than self need not be in a god or in anything in particular, the Court concluded that working the 12 steps necessarily entails practices and expressions that are, "as a matter of law, religious exercise for Establishment Clause purposes, no less than the nondenominational prayer in *Engel v Vitale*," 370 US 421 (1962) (12a). The Court of Appeals also found that when the petitioners pressured inmates to participate in the religious exercise they were endorsing or promoting religion, in violation of the second prong of *Lemon v Kurtzman*, 403 US 602 (1971) (18a, 23a).

The Court specifically objected to the portion of the program that refers participants to self-help group meetings like AA. It concluded, despite the absence of a record to support it, that AA volunteers "can reasonably be expected to be wholeheartedly imbued with and committed to the religious precepts predominating the A.A. basic texts. It, therefore, is highly unlikely that

religious indoctrination of A.A. volunteer leaders would not affect the tone and content of A.A. sessions for inmates" (19a-20a).

The two dissenting judges concluded that there was no violation of the Establishment Clause. The dissent noted that the ASAT program was a rationally justified means of serving the important and predominantly secular State goal of treating and reducing inmate substance abuse, that the 12-step method is overwhelmingly secular in philosophy, object and operation, and that whatever religious aspects of AA find their way into the ASAT program are remote and incidental and are not compulsory or mandatory (31a-32a, 36a). Upon a "fair review" of the totality of the AA message and mission, the dissenters concluded that the singular aim of AA is to help people help themselves in attaining and maintaining sobriety through personal, voluntary and secular means (36a).

The dissent took issue with the majority's finding that the atmosphere in which the requirement is imposed is coercive. The inmate is in prison, which is inherently a coercive atmosphere, and merely wants to participate in the family reunion program, which is a discretionary program. This context is very unlike the state-sponsored prayer in a public school setting (42a, 47a-50a, 51a-53a). The dissent noted that the mere exposure to religious ideas does not violate the second prong of *Lemon v Kurtzman,* that inmates do not have a constitutional right to force government to tailor its substance abuse treatment programs to their individual preferences and that there is no record to support the majority's conclusion that the program Mr. Griffin attended was operated in a religious manner (43a-44a).

The dissent also noted that other courts have not considered 12-step self help programs like AA to be religious ones (46a) and found factually unsupported the majority's finding that the State delegated authority to a group (AA or other such group) committed to encouraging the acceptance of religious doctrine (53a). In the dissenters' view, the majority's conclusion that AA volunteers would proselytize and indoctrinate inmates in religious doctrine was not only "gratuitous," but could find no support in the record or in empirical data (53a).

REASONS FOR GRANTING THE WRIT

This case presents an important issue as to whether a State, in its efforts to address substance abuse problems by its citizens and particularly its prison inmates, may condition the eligibility for a program or privilege it offers on an individual's participation in a self-help group that uses the AA 12-step method. The Court of Appeals decision, holding that the Establishment Clause bars New York State from conditioning participation in its family reunion program on attendance at self-help group meetings using the AA 12-step method of recovery, calls into question the availability of these programs to criminal justice systems throughout the country. Also, the holding that meetings of AA and other 12-step groups are facially the equivalent of religious exercises, without an examination into the actual operation of any particular group, is unprecedented.

I

It is well known that the 12-step method has proven very effective in helping substance abusers to recover from their addictions and to maintain their sobriety. *See, e.g., Warner v Orange County Dept. of Probation*, 827 F Supp 261, 268 (SDNY 1993) (*Warner I*), ("A.A. is widely used in penal

systems across the United States and has an admirable record of success in treating people with alcohol problems", citing *Jones v North Carolina Prisoners' Labor Union, Inc.*, 433 US 119 [1977], and *Williams v Ward*, 556 F2d 1143, 1146 [2d Cir], *cert dismissed*, 434 US 944 [1977]). The method has enjoyed wide use not only in New York, but across the country as a precondition for the restoration of certain privileges. *See, e.g., Jones v Smid*, 1993 WL 719562 (SD Iowa 1993)[4] ("Operating While Intoxicated" treatment program in prison patterned after the 12 steps did not violate the Establishment Clause); *O'Connor v State of California*, 855 F Supp 303 (CD Cal 1994) (court upheld the requirement, imposed as part of the probationary terms on a person convicted of drunk driving, that he attend a self-help program, where the principal program available was AA); *Stafford v Harrison*, 766 F Supp 1014 (D Kansas 1991) (court dismissed civil rights action challenging the requirement that a prison inmate complete an alcohol rehabilitation program modeled on the AA approach before he was eligible for parole, finding no First Amendment violation); *Youle v Edgar*, 172 Ill App 3d 498, 526 NE2d 894 (App Ct Ill, Fourth District 1988) (a requirement of the Secretary of State that an individual whose license had been revoked for DWI participate in an ongoing support/recovery program like AA before driving privileges could be reinstated did not violate his constitutional rights); see also, Peters, "Substance Abuse Services in Jails and Prisons", 17 Law and Psychology Review 85, 104, 107, 108, 110-111 (1993) (reproduced in part in the Appendix at 75a-85a). *But see, Warner v Orange County Dept. of Probation*, 870 F Supp 69 (*Warner II*) (SDNY 1994), *pending appeal to the Second Circuit*, (attendance at AA program as a condition of probation found to violate the Establishment Clause after trial based on the tone of the specific meetings the plaintiff attended).

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[4]This opinion has not been officially reported.

II

Other than New York's Court of Appeals, no court which has been presented with this issue has held that the 12-step method of AA is, on its face, an exercise of religion. *See, Boyd v Coughlin,* 914 F Supp 828 (NDNY 1996) (the same New York ASAT program presented here was upheld as constitutional under the Establishment Clause)[5]; *Jones v Smid,* 1993 WL 719562; *Stafford v Harrison,* 766 F Supp at 1016; *Youle v Edgar,* 172 Ill App 3d 498, 526 NE2d 894; *see also, Scarpino v Grosshiem,* 852 F Supp 798, 805 (SD Iowa 1994) (since a reasonable person could have believed that the operation of an alcoholic rehabilitation program utilizing the AA method in a prison was lawful, the defendants/prison officials were entitled to qualified immunity). *But see, O'Connor v State of California,* 855 F Supp 303 (court held that the fact that the concept of God is incorporated in a program in which the State encourages—rather than requires—participation does not, by itself, violate the Establishment Clause). Even the court in *Warner II,* 870 F Supp 69, which held that attendance at an AA program required as a condition of probation did violate the Establishment Clause, rested its holding, after a trial, on the way the particular AA meetings attended by the plaintiff were conducted. 870 F Supp at 72. That case is on appeal to the Second Circuit.[6]

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[5]The Second Circuit had suspended the briefing schedule in *Boyd* pending its decision in *Warner v Orange County Department of Probation (Warner II)* and the New York Court of Appeals decision in this case. The Second Circuit has not yet decided *Warner*, which was argued over one year ago.

[6]See note 5.

III

Inmates are introduced to self-help groups such as AA and NA (Narcotics Anonymous) so that they can readily continue their recovery upon release from prison by participating in a similar self-help group. The 12-step programs are used to further the secular purpose of aiding in recovery from addiction even after release from prison. *See*, Affidavit of Lorraine Cohen (87a-89a, 91a); *see also, Boyd v Coughlin*, 914 F Supp at 833; *Stafford v Harrison*, 766 F Supp at 1017; Robertson, N., "The Changing World of Alcoholics Anonymous", N.Y. Times Magazine, Feb. 21, 1988, pp 40, 43-44 (in the Appendix at 93a, *et seq.*).

The central and only purpose of self-help groups such as AA is to aid in recovery from substance abuse and working the 12 steps developed by Alcoholics Anonymous is a path to that end. These steps are therapeutic, using techniques of group therapy and self-help. Indeed, the AA preamble is as follows:

> "The only requirement for membership is a desire to stop drinking. * * * A.A. is not allied with any sect, denomination, politics, organization, or institution; does not wish to engage in any controversy, neither endorses nor opposes any causes. Our primary purpose is to stay sober and help other alcoholics to achieve sobriety."

See, "How A.A. Members Cooperate With Other Community Efforts to Help Alcoholics", Alcoholics Anonymous World Services, Inc (May 1980), (108a). That same pamphlet describes AA as,

> a worldwide fellowship of men and women who help each other to maintain sobriety and who offer to share

> their recovery experience freely with others who may have a drinking problem.

Id., at 113a.

AA specifically does not align itself with any sect or organization (see, preamble, above). In the 12-step program the word "God" is used as a term of art to express a concept of a higher power outside the patient's ego. In Step One, the substance abuser comes to terms with the fact that he or she is powerless over alcohol (or other substance) and that life is unmanageable. Step two then reads, "Came to believe in a Power greater than ourselves could restore us to sanity" (146a). As structured, the need for a greater power arises directly from the lack of power an alcoholic[7] realizes he or she has over his or her own life. The AA program founders concluded that self will and reason alone do not solve the problem, and to overcome this feeling of powerlessness the alcoholic has to learn to believe in a power greater than herself or himself to enable the alcoholic to solve the problem. *Twelve Steps and Twelve Traditions*, Alcoholics Anonymous World Services, Inc. 25-27 (13th ed 1983); *Alcoholics Anonymous*, Alcoholics Anonymous World Services, Inc. 45 (3d ed 1976).

NA, which is based on the same 12 steps, also describes this need for a higher power. "As addicts, we turned our will and lives over many times to a destructive power. Our will and our lives were controlled by drugs." *Narcotics Anonymous,* World Service Office, Inc. 24 (5th ed 1988). "At some point, we

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[7]For the purpose of discussion the term "alcoholic" is used because alcoholism is the primary target of Alcoholics Anonymous. However, the 12-step self-help method and its program applies to substance abusers generally.

realized that we needed the help of some Power greater than our addiction." Id at 24.

In *Twelve Steps and Twelve Traditions* it is made clear that "Alcoholics Anonymous does not demand that you believe in anything. All of its Twelve Steps are but suggestions." Id. at 26. It continues,

> "You can, if you wish, make A.A. itself your 'higher power.' Here's a very large group of people who have solved their alcohol problem. In this respect they are certainly a power greater than you, who have not even come close to a solution. Surely you can have faith in them. Even this minimum of faith will be enough."

Id. at 27. *Accord*, Nakken, J. "Keep It Simple - Step 2" (Hazelden) at 6 (139a).

Step Three, which the Court of Appeals found objectionable, reads, "Made a decision to turn our will and our lives over to the care of God *as we understood Him*." (emphasis in original) (146a). *Alcoholics Anonymous*, at 47, otherwise known as "The Big Book" or the central text of A.A., says that when speaking of "God" it is meant a patient's own conception of God, which need not be a god in the traditional and religious sense. There is an express disavowal that any particular concept of the higher power fits Step Three. It is left up to the individual. The key to the higher power concept is to attach oneself to something outside the ego.

Both AA and NA are similar to more psychologically based programs such as Reality Therapy, which puts more emphasis on self than God (*see, Alcoholism Counseling: Core Curriculum, Trainer's Manual*, New York State Division of Alcoholism

and Alcohol Abuse, Bureau of Professional Development (at 151a, *et seq.* in the Appendix) and which, in a parallel step to Step Three, emphasizes a willingness to turn to a therapist and a casting out of his or her ideas. Id. (at 154a). *See also*, Philip, Z., *A Skeptic's Guide to 12 Steps* (1990), pp 59-61 (discussion of the higher power residing within one's psyche).

Thus, the "higher power" in AA and NA can be anything, including God. Indeed, a person can successfully participate in the programs without a belief in any god. *See, Alcoholics Anonymous*, at 227-229 (story of a woman who did not believe in religion, but was helped by the AA 12-step method), and 417 (some AAs remain agnostics according to one recovered alcoholic). See also, *Narcotics Anonymous*, at 273-278 (story of an atheist who said, "Being an atheist does not stop me from working the program"). *Id.* at 278. *Cf., Warner II,* 870 F Supp at 73-74 (where the district court, in awarding nominal damages of $1, noted that the plaintiff did not participate in the meetings and easily maintained his independence of mind).

In short, the 12-step method does not preach or coerce religious belief. It suggests only that the recovering substance abuser look outside the ego and surrender his or her preconceived ideas to some thing, person or concept. This is neither a prayer nor a religious exercise.

IV

With a broad brush, the New York Court of Appeals held that it is "beyond peradventure that doctrinally and as actually practiced in the 12-step methodology, adherence to the AA fellowship entails engagement in religious activity and religious proselytization" and that "these expressions and practices constitute, as a matter of law, religious exercise for Establishment Clause purposes * * *." (11a-12a). Without a factual record to support how each self-help group is actually conducted, the court determined that AA groups ignore their espoused philosophy that there is no requirement of belief in anything in particular, that a participant's choice of a higher power is entirely individual, and that it need not be a religious or a theistic one. Instead, it decided that all AA volunteers invited to conduct prison self-help groups "can reasonably be expected to be wholeheartedly imbued with and committed to the religious precepts predominating in the A.A. basic texts." (19a-20a).

The Court of Appeals was wrong to conclude that working the 12 steps is, as a matter of law, equivalent to a religious exercise and to rely on this Court's pronouncements in *Lee v Weisman,* 505 US 577 (1992), and *Engel v Vitale,* 370 US 421, regarding prayer in the schools (12a). The exercises condemned by this Court in those cases were undeniably religious and without secular purpose, involving the devotional practice of praying to God.

Aside from the fact that participation in a 12-step self- help group is not a religious exercise, the required attendance does not amount to the coercion forbidden by the Establishment Clause. The New York Court of Appeals reached the erroneous conclusion that it does by making the inapt analogy to the

environment in which public school children are required to attend a state sponsored devotional prayer. This atmosphere cannot be compared to that in which substance abusers serving time in prison are asked, as a condition to receiving an unrelated privilege offered by the state, to attend self-help group meetings in which each participant defines its working concepts for himself or herself.

This Court has always been particularly sensitive to the context of prayer in a school setting, involving impressionable school children. *Lee v Weisman*, 505 US at 592, citing cases. The *Lee* Court said, "[w]e do not address whether that choice [of participating or protesting] is acceptable if the affected citizens are mature adults * * *." 505 US at 593. This compares to *Marsh v Chambers*, 463 US 783 (1983), in which the practice of the Nebraska Legislature of beginning its sessions with a prayer by a chaplain paid by the State was upheld. The *Marsh* Court was mindful that the individual claiming injury was "an adult, presumably not readily susceptible to 'religious indoctrination,' * * * or peer pressure" (comparing *Abington*, 374 US 203 [1963] [Brennan, J. concurring]). 463 US at 792. The *Lee* Court pointedly declared, "Our decisions in *Engel v Vitale*, *supra*, [370 US 421 (1962)], and *Abington School District v Schempp*, *supra*, [374 US 203 (1963)] require us to distinguish the public school context." 505 US at 597.

The Court of Appeals decision takes an illogical leap in transposing that analysis to prisoners (or criminal defendants) asked to participate in substance abuse recovery groups as a condition to some other privilege. Its decision will weaken the ability of the criminal justice establishment to rehabilitate prisoners (or criminal defendants) and to prevent future criminal acts, such as sale and possession of illegal drugs, driving while intoxicated and alcohol or drug related violent crimes by

depriving it of the use of these groups. While in some cases, alternative groups to those based on the 12 steps might be offered (a suggestion made by the Court of Appeals), there may be many occasions when there are no other groups available in the immediate geographic area. In those cases, the 12-step philosophy that the substance abuser works the steps based on his or her own ideas is sufficient protection of his or her rights under the Establishment Clause.

V

The Court of Appeals' facial indictment of a national organization and others using the same 12-step methodology, offering a valuable criminal justice tool both in New York and elsewhere, carries wide implications, yet is supported by only a thin thread of unwarranted speculation. The principle central to the Establishment Clause—guaranteeing freedom to believe as one chooses by requiring government to maintain a course of neutrality in matters of religion (*see, Lee v Weisman*, 505 US at 590-592)—is protected by the as applied approach. When required, an analysis may be made of a particular AA self-help group the State asks an inmate or criminal defendant to attend to ensure that it does not practice the 12-step philosophy or conduct its meetings to coerce religious beliefs.

The Court of Appeals has stretched the meaning of the second prong of this Court's test in *Lemon v Kurtzman*, 403 US 602, to an unnecessary extreme. While it is clear that the primary purpose of a state action may not be to promote, or endorse, even symbolically, religion of any kind (*School District of City of Grand Rapids v Ball*, 473 US 373, 390 [1985]; *County of Allegheny v American Civil Liberties Union Greater Pittsburgh Chapter*, 492 US 573, 590-593 [1989]), the mere use of the

word "God" in the context of the 12 steps should not be held to spell automatic state endorsement of theism.

In the first place, the State itself does not operate AA or other such self help groups. They are independent. In addition, these groups do not endorse or promote a theistic concept of "higher power," even if most of the participants documented in AA literature found their higher power to be some sort of god. By translating the highly individual choices of a supposed majority of participants into a state endorsement of a religious practice, the Court of Appeals has endowed this majority with a power to dictate State policy or to speak for the State for Establishment Clause purposes. There is no justification for removing from the State a valuable rehabilitative tool, which is careful to deny all affiliation with a religion or any religious purpose and does not require a belief in any religion or religious idea, on the sole basis of the Court's assumption as to how a majority of present-day AA participants ultimately choose to exercise their right to interpret their own higher power. Indeed, it would be most ironic if their choice of a deity for their higher power could threaten the neutrality the State demonstrated when it made that choice available.

The better view is that while many participants may use some concept of a god as their higher power, the State remains neutral because it is up to the individual how to interpret the force outside the ego that has proved so crucial to recovery from substance abuse. The State does not endorse or put its imprimatur on any particular interpretation.

On the other hand, if a particular AA group were conducted in a religious manner, preaching a faith and trust in a god, and if the state were aware of the religious theme when it asked the prisoner or criminal defendant to attend its meetings, one could

conclude that group had the State's endorsement, in violation of the Establishment Clause. But there is no basis for the blind faith of the New York Court of Appeals that the participants who choose to believe in a god will force that belief on the group as a whole and persuade them to ignore the 12-step philosophy of leaving questions of belief up to the individual.

The proscription against state endorsement of religion was never meant to apply to a mere possibility that a 12-step self-help group might conduct their meetings with a religious flavor. Such an overbroad interpretation is a preemptive strike against the State's neutral efforts to rehabilitate the substance abusers among its population. This Court should review the Court of Appeals decision, the damaging effects of which serve none of the purposes of the Establishment Clause.

Conclusion

For the reasons stated, the Petition for a Writ of Certiorari should be granted.

Dated: Albany, New York
September 6, 1996

Respectfully submitted,

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State of New York

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APPENDIX A—Order of the Court of Appeals

Remittitur

Court of Appeals
State of New York
The Hon. Judith S. Kaye, Chief Judge, Presiding

3 No. 73
In the Matter of David Griffin,
Appellant,
v.
Thomas A. Coughlin III, as
Commissioner of the New York
State Department of Correctional
Services, et al.,
Respondents.

The appellant in the above entitled appeal appeared by Robert N. Isseks, Esq.;
the respondents appeared by Hon. Dennis C. Vacco, Attorney General of the State of New York; and *amicus curiae* appeared by Marc D. Stern, Esq.

The Court, after due deliberation, orders and adjudges that the order is reversed, without costs, and judgment granted prohibiting respondents from conditioning petitioner's participation in the Family Reunion Program on petitioner's attendance in the subject Alcohol and Substance Abuse Treatment Program. Opinion by Judge Levine. Chief Judge Kaye and Judges Simons, Titone and Smith concur. Judge Bellacosa dissents and votes to affirm in an opinion in which Judge Ciparick concurs.

The Court further orders that this record of the proceedings in this Court be remitted to the Supreme Court, Ulster County, there to be proceeded upon according to law.

I certify that the preceding contains a correct record of the proceedings in this appeal in the Court of Appeals and that the papers required to be filed are attached.

s/Donald M. Sheraw
Donald M. Sheraw, Clerk of the Court

Court of Appeals, Clerk's Office, Albany, June 11, 1996.

APPENDIX B—Opinion of the Court of Appeals

State of New York
Court of Appeals

3 No. 73
In the Matter of David Griffin,
Appellant,
v.
Thomas A. Coughlin III, as Commissioner of the New York State Department of Correctional Services, et al.,
Respondents.

OPINION

This opinion is uncorrected and subject to revision before publication in the New York Reports

Robert N. Isseks, for appellant.
Julie S. Mereson, for respondents.
American Jewish Congress, *amicus curiae.*

LEVINE, J.:

On this appeal we hold that, under the Establishment Clause of the United States Constitution's First Amendment, an atheist or agnostic inmate may not be deprived of eligibility for expanded family visitation privileges for refusing to participate in the sole alcohol and drug addiction program at his State correctional facility when the program necessarily entails mandatory attendance at and participation in a curriculum which adopts in major part the religious-oriented practices and precepts of Alcoholics Anonymous (hereinafter A.A.). Thus, we reverse the order of the Appellate Division and grant judgment in favor of petitioner prohibiting respondents from conditioning petitioner's participation in the Family Reunion Program on attendance in the subject Alcohol and Substance Abuse Treat-

ment Program (hereinafter ASAT Program) as presently constituted.

In so holding, we in no way denigrate the proven effectiveness of the A.A. approach to alcoholism or drug addiction rehabilitation, nor do we imply that State correctional authorities must discontinue the present ASAT Program if it were conducted on a voluntary basis, or that they could not include a noncoercive use of A.A.'s 12-step regimen as part of an alternative prisoner drug and alcohol abuse treatment effort. Likewise, we have no doubt that the Department of Correctional Services could validly construct a rehabilitation model containing incentives and penalties, as in the ASAT Program, providing it offered a secular alternative to the A.A. component. In that way, the State could maintain the neutrality required by the Establishment Clause (*see, Walz v Tax Commn. of New York City,* 397 US 664, 673; *see also, Bowen v Kendrick,* 487 US 589, 606-608).

Facts

Petitioner, an inmate serving a sentence of imprisonment in the State correctional system, was transferred to the Shawangunk Correctional Facility, Ulster County, in May 1991. In his petition in this CPLR article 78 proceeding, he alleged that, prior to this transfer, he had been approved for participation in the Family Reunion Program. Upon arrival at the Shawangunk Facility, he was told that because his criminal history revealed his use of heroin between 1955 and 1968, his continued eligibility for the Family Reunion Program would be contingent on his participation in the ASAT Program at the facility.

After attendance at the ASAT Program for several months, petitioner submitted a grievance requesting that he be excused from further involvement in ASAT without forfeiting his right to participate in the Family Reunion Program. Petitioner had a

long time documented history of having declared himself an atheist or agnostic to correctional authorities. He complained that the ASAT Program he had been attending was based upon religious principles embodied in the "Twelve Steps"[1] and "Twelve Traditions" credos of Alcoholics Anonymous, thereby violating "the portion of the First Amendment of the U.S. Constitution that requires a separation between Church and State." He attached both manifestos to his grievance.

A member of the facility's grievance committee initially responded to petitioner's grievance that "[a]t this time the facility does not offer a substance abuse program (therapeutic) without a religious background." He later averred that, at that time, he was unfamiliar with the actual workings of the ASAT Program and based his conclusion that it was religion-oriented solely

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[1]The "Twelve Steps" are as follows: "1. We admitted we were powerless over alcohol—that our lives had become unmanageable. "2. Came to believe that Power greater than ourselves could restore us to sanity. "3. Made a decision to turn our will and our lives over to the care of God *as we understood Him.* "4. Made a searching and fearless moral inventory of ourselves. "5. Admitted to God, to ourselves, and to another human being the exact nature of our wrongs. "6. Were entirely ready to have God remove all these defects of character. "7. Humbly asked Him to remove our shortcomings. "8. Made a list of all persons we had harmed, and became willing to make amends to them all. "9. Made direct amends to such people wherever possible, except when to do so would injure them or others. "10. Continued to take personal inventory and when we were wrong promptly admitted it. "11. Sought through prayer and meditation to improve our conscious contact with God *as we understood Him,* praying only for knowledge of His will for us and the power to carry that out. "12. Having had a spiritual awakening as the result of these steps, we tried to carry this message to alcoholics, and to practice these principles in all our affairs" (Alcoholics Anonymous, Alcoholics Anonymous World Services Inc., at 59-60 [3d ed 1976] [emphasis in original]).

upon his reading the "Twelve Steps" and "Twelve Traditions" submitted with petitioner's grievance.

Petitioner's grievance was denied. After exhausting all administrative opportunities for relief, he brought this CPLR article 78 proceeding seeking a judgment annulling the determination and requiring respondents to discontinue the requirement of petitioner's attendance in the "religious" program in order to remain eligible for participation in the Family Reunion Program. Petitioner also alleged that, at a hearing with Shawangunk Facility authorities, both staff and inmate representatives acknowledged that the ASAT Program at the facility was a religious program.

Respondents' answering papers conceded that a major emphasis of the ASAT Program was the inmate's participation in self-help groups conducted by A.A. or Narcotics Anonymous (N.A.)[2] volunteers pursuant to A.A.'s Twelve Steps and fully employing the A.A. meeting methodology. Respondents averred that the A.A. practices and precepts have proven to be the most effective method for preventing relapse of the recovering alcoholic or chemical substance abuser. The answering papers characterized the utilization of A.A. and N.A. group practices as a "state of the art" major component of any addiction program. Pointing to A.A. literature[3], respondents averred that the

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[2]The parties agree that Narcotics Anonymous has adopted the Twelve Steps of A.A. as its guiding principle and that its beliefs and practices do not vary in any significant way from A.A.

[3]It is evident that respondents were relying primarily on a book entitled "Alcoholics Anonymous," subtitled as the "Third Edition of the Big Book, The Basic Text for Alcoholics Anonymous" (Alcoholics Anonymous World Services, Inc. [3d Edition, 1976]) (hereinafter, A.A. Big Book), and a text entitled "Twelve Steps and Twelve Traditions" (Alcoholics Anonymous

(continued...)

references to God actually mean some "higher power as the individual may understand such higher power," not as the concept would be known by "organized religions." Thus, respondents claimed that the A.A. component of the ASAT Program "does not make specific references to God as an institutional religion would wherein the individual is required to worship, praise, give thanks or petition to a Creator" (Affdvt of Lorraine Cohen, Senior Correctional Counselor for ASAT, New York State Department of Correctional Services).

Supreme Court dismissed the petition without affording petitioner a hearing to develop a record of the facts underlying his complaint. The Appellate Division affirmed (211 AD2d 187). As previously noted, the Appellate Division relied upon the A.A. Big Book and the A.A. Twelve Steps/Twelve Traditions texts to find that, despite the repeated references to "God" in the Twelve Steps and Twelve Traditions, A.A. does not " 'demand' " adherence to any particular faith but to " 'spirituality' " and " 'open-mindedness' " (*id.*, at 190, [quoting the A.A. Big Book and A.A. Twelve Steps/Twelve Traditions]). The court also found quite significant that A.A. allows participants to select their own conception of God, as shown by the reference in Step 3 to "God *as we understood Him.*"

On the foregoing basis, the Appellate Division concluded that petitioner's documentary evidence did not establish that the A.A. component of the ASAT Program was a religious exercise violating the Establishment Clause. Absent proof of a more sectarian actual practice at the A.A. meetings petitioner was

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[3](...continued)
World Services, Inc. [13th ed 1983]) (hereinafter A.A. Twelve Steps/Twelve Traditions). Although neither of these works were part of the record in the courts below, apparently they were handed up by respondents and they are referred to at length in the Appellate Division's decision (*see*, 211 AD2d 187, at 189-190).

required to attend, the Court held that his petition was properly dismissed. We granted petitioner leave to appeal the Appellate Division's ruling and now reverse.

Analysis

In our view, the Appellate Division erred in rejecting the petition in this case by applying too narrow a concept of religion or religious activity for Establishment Clause analysis and disregarding the compulsion used to induce petitioner to attend and participate in A.A. meetings heavily laced with at least general religious content. Moreover, even if we were to agree with the Appellate Division's holding that the governing principles and practices of A.A., as incorporated in the ASAT Program, do not *necessarily* require an atheist participant to accept the existence of God in the religious sense, or to engage in religious activity, we would, nonetheless, find that the mandatory and exclusive incorporation of A.A. doctrine and practices in the ASAT program violates Establishment Clause principles requiring governmental neutrality with respect to religion (*see, Board of Educ. of Kiryas Joel Vill. Sch. Dist. v. Grumet,* 512 US__, __, 114 S Ct 2481, __, 129 L Ed 2d 546, 556-557; *School Dist. of Abington Twp. v Schempp,* 374 US 203, 222), and prohibiting governmental endorsement of religion (*Board of Educ. of Kiryas Joel Vill. Sch. Dist. v Grumet, supra; County of Allegheny v American Civil Liberties Union,* 492 US 573, 592-593; *Lemon v Kurtzman,* 403 US 602, 612).

I

A reading of the ASAT Program Operations Manual reveals—and respondents do not dispute—that essential major components, indeed, the heart of the program, are the A.A. Twelve Step manifesto itself and inmate participation in the

group sessions conducted by A.A. and N.A. volunteers utilizing the A.A. *modus operandi.* Thus, the ASAT Program Manual lists in its "Mission Statement" its purpose to prepare addicted inmates to return to the community and to reduce recividism "by providing education and counseling on continued abstinence * * * and participation in self-help groups based on the '12-step' approach." The Manual designates as the first element of the "philosophy" of the ASAT Program the "12-step approach," *i.e.,* "a set of principles which teach an individual how to build a life based on sobriety." Adopting the basic A.A. methodology, the ASAT Program's "Philosophy" declares the effectiveness of "*working the 12 suggested steps* [which] act as a guide * * * to build a new way of life without the use of alcohol and/or drugs, one day at a time" (emphasis supplied). The Manual describes the ASAT Program content as including education and counseling with a curriculum based upon the " '12-step' approach to recovery."

Concededly, there are passages in A.A. literature, relied upon heavily by respondents, the Appellate Division and the dissent here, which, in stressing the openness and inclusiveness of the A.A. movement, eschew any intent to impose a particular sectarian set of beliefs or a particular concept of God upon participants. However, a fair reading of the fundamental A.A. doctrinal writings discloses that their dominant theme is unequivocally religious, certainly in the broad definitional sense as "manifesting faithful devotion to an acknowledged ultimate reality or deity" (Webster's 9th New Collegiate Dictionary 995 [9th ed 1990]). Indeed, the A.A. basic literature most reasonably would be characterized as reflecting the traditional elements common to most theistic religions. Thus, God is named or referred to in five of the 12 steps. "Working" the 12 steps includes confessing to God the "nature of our wrongs" (Step 5), appealing to God "to remove our shortcomings" (Step 7) and seeking "through prayer and meditation" to make "contact" with

God and achieve "*knowledge of His Will*" (Step 11 [emphasis supplied]). The 12 Traditions include a profession of belief that "there is one ultimate authority—a loving God as He may express Himself in our group conscience."

While A.A. literature declares an openness and tolerance for each participant's personal vision of God ("*as we understood Him*" [Steps 3 and 11] [emphasis in the original]), the writings demonstrably express an aspiration that each member of the movement will ultimately commit to a belief in the existence of a Supreme Being of independent higher reality than humankind. Thus, in the A.A. Big Book—the basic text of A.A.—Chapter 1, "Bill's Story," describes the spiritual transformation of one of the co-founders of A.A., in which he finally achieved salvation from his alcoholism: by "enter[ing] upon a new relationship with my Creator * * * it meant destruction of self-centeredness. I must turn in all things to the Father of Light who presides over us all" (A.A. Big Book, at 13-14). In Chapter 4, entitled "We Agnostics" the theme is unambiguously proselytizing:

> As soon as we admitted the possible existence of a Creative Intelligence, a Spirit of the Universe underlying the totality of things, we began to be possessed of a new sense of power and direction, provided we took other simple steps. We found that God does not make too hard terms with those who seek Him (*id.* , at 46).
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> Instead of regarding ourselves as intelligent agents, spearheads of God's ever advancing creation, we agnostics and atheists chose to believe that our human intelligence was the last word, the alpha and the omega, the beginning and end of all. Rather vain of us, wasn't it?
>
> We, who have traveled this dubious path, beg you to lay aside prejudice, even against organized religion. We

> have learned that whatever the human frailties of various faiths may be, those faiths have given purpose and direction to millions. People of faith have a logical idea of what life is all about" (*id.*, at 49).

A.A.'s Twelve Steps/Twelve Traditions volume, describing the spiritual evolution of atheists and agnostics through working the 12 steps, states:

> Consequently, in Step Three, we turned our will and our lives over to the care of God as we understood Him. For the time being, we who were atheists or agnostics discovered that our own group, or A.A. as a whole, would suffice as a higher power. Beginning with Step Four, we commenced to search out the things in ourselves which had brought us to physical, moral, and spiritual bankruptcy (A.A. Twelve Steps/Twelve Traditions, at 107)
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> * * *
>
> So, practicing these Steps, we had spiritual awakening about which finally there was no question. Looking at those who were only beginning and still doubted themselves, the rest of us were able to see the change setting in. From great numbers of such experiences, *we could predict that the doubter who still claimed that he hadn't got the "spiritual angle," and who still considered his well-loved A.A. group the higher power, would presently love God and call Him by name* (*id.*, at 109 [emphasis supplied]).

The foregoing demonstrates beyond peradventure that doctrinally and as actually practiced in the 12-step methodology,

adherence to the A.A. fellowship entails engagement in religious activity and religious proselytization. Followers are urged to accept the existence of God as a Supreme Being, Creator, Father of Light and Spirit of the Universe. In "working" the 12 steps, participants become actively involved in seeking such a God through prayer, confessing wrongs and asking for removal of shortcomings. These expressions and practices constitute, as a matter of law, religious exercise for Establishment Clause purposes, no less than the nondenominational prayer in *Engel v Vitale* (370 US 421), that is, "a solemn avowal of divine faith and a supplication for the blessings of the Almighty. *The nature of such prayer has always been religious"* (*id.*, at 424 [emphasis supplied]; *see also, Lee v Weisman*, 505 US__, __, 112 S Ct 2649, 2664 [Blackmun, J., concurring]).

The ASAT Manual not only fails to disclaim and disassociate the prison system's drug and alcohol addiction treatment program from A.A.'s religious approach to combatting these afflictions, but actually embraces and reinforces worship in the A.A. mold. Thus, the ASAT Manual includes as part of its curriculum, group discussions of "[w]hat it means to work the 12 steps;" exploration of "issues of higher power," with use of a suggested audio entitled "The Will of God;" and prayer and meditation in conjunction with a suggested video entitled "Our Father."

The dissent does not dispute the accuracy of our documentation of the content of A.A. doctrinal texts. Instead, the dissent disavows the significance of the repeated "deistic symbols and allusions" (Dissent, Slip Opn, at 1) in fundamental A.A. doctrine, that is, to God as a Supreme Being with whom contact through prayer is exhorted, and the like, although, undeniably, the words used "ha[ve]always been religious" (*Engel v Vitale, supra*). We have purposely quoted at length from the A.A. doctrinal texts to eliminate any doubt but that the references to God and prayer in the Twelve Steps were intended in their

"conventional sense" (*Welsh v United States*, 398 US 333, 352 [Harlan, J., concurring]). That is, the A.A. basic doctrinal writings clearly express a preference for and a conviction favoring a concept of God and prayer which is not merely "a conscientious social belief, or a sincere devotion to a high moralistic philosophy [but] one based upon a person's belief in his responsibility to an authority higher and beyond any worldly one" (*Id.*, at 348).[4]

In an effort to downplay the religiosity of the foregoing A.A. tenets, the dissent suggests, without verification from actual source materials, that the unequivocally proselytizing themes of early A.A. texts have implicitly been superseded by later more secular A.A. writings into which A.A. doctrine has evolved, which will become apparent if one would only examine all of the A.A. doctrinal materials in their historical contexts (*see*, Dissent, Slip Opn, at 5). In this fashion, the dissent discounts entirely, the A.A. Big Book, first written in 1939, instead relying exclusively (*id.*, at 8, 9) on the Twelve Traditions portion of the A.A. Twelve Steps/Twelve Traditions volume published in 1952, particularly because it declares "against sectarian preference" (*id.*, at 8), as though the Establishment Clause only bars State preferences for a particular sect or sects.

The dissent's thesis that there was an historical evolution of A.A. doctrine and therapeutic/rehabilitative methodology from the initial, more religious A.A. Big Book to the later, essentially

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[4]The dissent's criticism of our "inordinate * * * inflation" of A.A. writings because they are "not documented by a customary * * * record basis" (Dissent, Slip Opn, at 19) is unwarranted. It was respondents, in all courts throughout this proceeding, who have invoked and cited to these A.A. basic doctrinal texts, ostensibly to show that all references to God and prayer in the Twelve Steps were secular. Not even respondents now claim that these writings are not properly before this Court to explain the A.A. 12-steps credo and methodology incorporated in the ASAT Program.

secular, Twelve Traditions (*see,* Dissent, Slip Opn, at 5-6, 9-10), is refuted by the writings themselves. Thus, the 1952 A.A. Twelve Steps/Twelve Traditions volume itself states unequivocally in its Foreword that "[t]he book 'Alcoholics Anonymous' [the 1939 A.A. Big Book] became the basic text of the Fellowship, *and still is"* (A.A. Twelve Steps/Twelve Traditions, at 17 [emphasis supplied]). The Foreword to the 1952 volume also explains the differing roles of the Twelve Steps and the Twelve Traditions. "A.A.'s Twelve Steps are a group of principles, *spiritual in nature,* which, *if practiced, as a way of life,* can expel the obsession to drink and enable the sufferer to *become happily and usefully whole"* (A.A. Twelve Steps/Twelve Traditions, at 15 [emphasis supplied]). "[T]he *spiritual* ideas of the Society were *codified* for the first time in the Twelve Steps" (*id.*, at 17 [emphasis supplied]).

The Foreword to the A.A. Twelve Steps/Twelve Traditions also articulates the function and origin of the Twelve Traditions, that "[t]hey outline the means by which A.A. *maintains its unity* and *relates itself to the world about it" (id.,* at 15 [emphasis supplied]). The Twelve Traditions were developed as the A.A. movement began to achieve widespread acceptance, in response to "threatening questions of membership, money, personal relations, public relations, management of groups, clubs, and scores of other perplexities" (*id.*, at 18).

Thus, the 1952 volume, a portion of which the dissent relies upon as demonstrating a basic A.A. doctrinal shift to the secular, itself explains the dichotomy of roles between the A.A. Big Book and Twelve Steps on the one hand, and the Twelve Traditions on the other. The former writings contain A.A.'s spiritual doctrines and therapeutic, rehabilitative modalities, to be "practiced as a way of life" (*id.,* at 17). As we have demonstrated, these texts are unequivocally religious in theme and proselytizing in content.

Conversely, the Twelve Traditions essentially deal with the nondoctrinal, secular problems which can be expected to arise and challenge any popular movement—organizational structure, finances, membership eligibility, management authority and the like. It should come as no surprise, therefore, that the content of the Twelve Traditions is more secular and less religious in tone than its Twelve Steps companion piece in the same volume. That is because it was designed not to supersede the reverent doctrines and practices of the A.A. literature which we have already quoted, but to address the essentially secular issues the A.A. movement confronted as it achieved public acceptance. Even then, the Twelve Traditions portion of A.A. Twelve Steps/Twelve Traditions reaffirms the essential religious convictions of the A.A. society. In the "long form" Twelve Traditions, Tradition Three contains a parable concerning an atheist, "Ed", who, after joining A.A. protested all of the "God stuff" of practicing the Twelve Steps. Then, as expected, Ed lapsed from sobriety, until, alone and "holed up in a cheap hotel * * * [a]s he tossed in bed, his hand brushed the bureau nearby, touching a book. Opening the book, he read. It was a Gideon Bible. * * * It was the year 1938. He hasn't had a drink since" (A.A. Twelve Steps/Twelve Traditions, at 143-145). Thus, while it is of course true that the primary objective of A.A. is to enable its adherents to achieve sobriety, its doctrine unmistakably urges that the path to staying sober and to becoming "happily and usefully whole," is by wholeheartedly embracing traditional theistic beliefs.

Even if the dissent's disavowal of A.A.'s religiosity is found not compelling, the dissenters suggest that the A.A. component of the ASAT Program (1) is essentially insignificant or "attenuated" (*see,* Dissent, Slip Opn, at 4), albeit requiring at least weekly attendance at A.A. operated group meetings for 26 weeks and constant working of the Twelve Steps in all other parts of the ASAT curriculum; and (2) is readily severable from

the predominantly secular ASAT Program (Dissent, Slip Opn, at 22), although the ASAT Program Manual itself states that participation in the A.A. group meetings is "*essential* to the fulfillment of program goals" (emphasis supplied). These alternative arguments are therefore also unpersuasive.

II

Once, thus, it has been demonstrated that A.A. tenets and practices necessarily entail religious exercise, the conclusion appears unavoidable that its use by the State correctional system as an essential component of an exclusive, compulsory attendance ASAT Program violates the Establishment Clause. Here, the State, through its correctional authorities at the Shawangunk facility, has exercised coercive power to advance religion by denying benefits of eligibility for the Family Reunion Program to atheist and agnostic inmates who object and refuse to participate in religious activity which is an inextricable part of the ASAT Program. No secular drug and alcohol addiction treatment program devoid of A.A.'s practices and doctrines, which would qualify an inmate for eligibility to participate in the Family Reunion Program, is offered as a substitute.

A.

There is no firmer or more settled principle of Establishment Clause jurisprudence than that prohibiting the use of the State's power to force one to profess a religious belief or participate in a religious activity. As Justice Black explained in the first case applying the Establishment Clause to the States, " 'the establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. * * * Neither can force nor *influence* a person *to go to* or remain away from *church against his will* or force him to

profess a belief or disbelief in any religion. *No person can be punished for entertaining or professing religious beliefs or disbeliefs* * * *" (*Everson v Board of Educ.*, 330 US 1, 15-16 [emphasis supplied]).

The court in *Torcaso v Watkins* (367 US 488) struck a provision of a State constitution conditioning the right to hold public office on a declaration of belief in God, holding: "we repeat and again reaffirm that neither a State nor the Federal Government can constitutionally *force* a person *'to profess a belief* or disbelief in any religion.' Neither can constitutionally pass laws or *impose requirements which aid all religions as against all nonbelievers,* and neither *can aid those religions based on a belief in the existence of God* as against those religions founded on different beliefs" (*id.*, at 495 [emphasis supplied]).[5]

Indeed, in *Lee v Weisman* (505 US__, 122 S Ct 2649, *supra*), although the Supreme Court split on whether a junior high school's inclusion of a nondenominational prayer at its graduation exercises was coercive, the Court was unanimous in condemning State compulsion to attend or participate in a religious practice. Justice Kennedy, writing for the majority, stated (505 US, at __, 112 S Ct, at 2660): "it is a tenet of the First Amendment that the State cannot require one of its citizens to forfeit his or her rights and benefits as a price of resisting conformance to a State-sponsored religious practice." Concur-

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[5]Both the dissent and the Appellate Division rely heavily on A.A.'s "explicit declaraton against sectarian preference" as being dispositive (*see,* Dissent, Slip Opn, at 8; 211 AD2d, at 190). *Torcaso* clearly interdicts governmental pressure favoring religion generally—not merely favoring a particular religious sect or sects. This view of the reach of the Establishment Clause is supported by respected constitutional law scholars (*see,* 4 Rotunda and Nowak, Treatise on Constitutional Law § 21.3, at 435; *see also, School Dist. of Abington Twp v Schempp,* 374 US 203, 216-217, *supra*).

ring in *Lee v Weisman,* Justice Blackmun opined that coerced attendance at a religious exercise is invariably sufficient to establish an Establishment Clause violation (505 US, at __, 112 S Ct, at 2664, *supra*): "although our precedents make clear that proof of government coercion is not necessary to prove an Establishment Clause violation, it is sufficient. *Government pressure to participate in a religious activity is an obvious indication that the government is endorsing or promoting religion*" [emphasis supplied]. And Justice Scalia for the four dissenting Justices agreed that the Establishment Clause bars coercion by "*force of law and threat of penalty*" (emphasis in the original) to engage in a religious activity, such as requiring a person to "attend church and observe the Sabbath" (505 US, at __, 112 S Ct, at 2683, *supra*).[6]

Thus, it follows that the Shawangunk Correctional Facility may not constitutionally require petitioner "to forfeit his * * * benefits [eligibility for the Family Reunion Program] at the price of resisting conformance to a state-sponsored religious practice" (*Lee v Weisman, supra,* 505 US, at __, 112 S Ct, at 2660). The enforced attendance at A.A. meetings as part of the ASAT Program violates the Establishment Clause in that "*an audience gathered by State Power* is lent * * * to a religious cause"

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[6]The foregoing opinions of all nine of the Justices in *Lee v Weisman* dealing with anticoercion as a settled precept of the Establishment Clause either independently or as a prohibited governmental endorsement of religion in violation of the second prong of the three-part Establishment Clause test of *Lemon v Kurtzman, supra*), effectively dispose of the dissent's criticism that we have wrongfully interjected a "dominant" coercion element (*id.,* at 12; *see also, id.,* at 11), in a "novel" (*id.,* at 11) or "tenuous" manner (*id.,* at 1) unsupported by precedent, to Establishment Clause jurisprudence. *See also* the views of constitutional scholar Laurence Tribe, quoted *infra.* Our Court also recognized that anticoercion was an essential precept of the Establishment Clause in *New York School Boards Assn. v Sobol* (79 NY2d 333, 337).

(Tribe, American Constitutional Law [2d ed], at 1170 [emphasis supplied]). In that way the Shawangunk facility has "apparently employed the machinery of the state to gather an [involuntary] audience for religion" (*id.*, at 1173).

B.

Despite the overwhelmingly religious tone of the A.A. basic texts as quoted above, literally urging performance of quite traditional religious devotional exercises in working the 12 steps, and the pressure put on petitioner to attend A.A. sessions at pain of losing family contacts, the Appellate Division apparently accepted respondents' position that the Establishment Clause was not violated because other A.A. writings suggest a toleration of belief in a "God" as merely some "Higher Power" without any religious content (*see,* 211 AD2d, at 189-190). Therefore, the Appellate Division concluded, the petition fails even at the pleading stage, in the absence of some extrinsic evidence of religious coercive techniques used in actual practice at A.A. meetings in the Shawangunk facility (211 AD2d, at 194). Aside from the obvious difficulty in conceptualizing how one could perform a confessional of "wrongs" (Step 5) or seek, through "prayer," "contact" (Step 11) with a God devoid of religious content, the Appellate Division's rationale for upholding the A.A. component of the ASAT program is erroneous in two respects. First, even if respondents are correct that A.A. permits a secular interpretation of its doctrines and practices, undeniably its paramount theme, as we have demonstrated, favors a religious interpretation. Therefore, respondents' defense fails under the " 'wholesome *neutrality*' " requirement of the Establishment Clause (*see, School Dist. of Abington Twp. v Schempp,* 374 US 203, 222, *supra* [emphasis supplied]).

The A.A. volunteers who are invited to conduct the prison self-help group meetings of inmates in the ASAT Program,

where the 12 steps are worked, can reasonably be expected to be wholeheartedly imbued with and committed to the religious precepts predominating in the A.A. basic texts. It, therefore, is highly unlikely that the religious indoctrination of A.A. volunteer leaders would not affect the tone and content of A.A. sessions for inmates. Exactly that result was proved at trial before the United States District Court in *Warner v Orange County Dept of Probation* (870 F Supp 69 [SDNY]). There, the plaintiff was required to participate in A.A. meetings as a condition of probation upon his state conviction for drunken driving. The U.S. District Court found that "[g]roup prayer was common at the A.A. meetings plaintiff attended. Many of the meetings began with a non-denominational 'Serenity Prayer' * * * and all of the meetings ended with the Lord's prayer, which is a specifically Christian prayer. In addition, those attending the meetings were strongly encouraged to pray" (*id.*, at 71). In *O'Connor v State of California* (855 F Supp 303, 306 [D Cal]), virtually identical findings were made on the religiously-oriented conduct of A.A. meetings, attendance at which had been imposed as an alternate condition of probation.

Infringement of the neutrality principle underlying the Establishment Clause is readily apparent here. The State, through its ASAT Program, delegates to A.A. volunteers a crucial part of the State's discretionary authority to conduct mandatory treatment programs for alcohol and drug addicted inmates in the State's prison system. Inmates are pressured to participate in the program by the State's conditioning eligibility for the Family Reunion Program on attendance. Yet correctional authorities have not incorporated into the ASAT Program any effective means to insure that A.A. meetings for inmates are free of religious content and that rehabilitation and treatment are performed by purely secular means, rather than the unequivocally proselytizing messages of the A.A. Big Book and A.A. Twelve Steps/Twelve Traditions we have previously quoted.

In the foregoing respects, the State-adopted exclusive but mandatory ASAT Program fails to pass Establishment Clause muster for the same reason that the Supreme Court affirmed this Court's invalidation of the New York statute creating a special school district in *Board of Educ. of Kiryas Joel Vill. Sch. Dist. v Grumet* (512 US __, 114 S Ct 2481, 129 L Ed 2d 546, *supra*). Here, as in *Kiryas Joel,* the State "departs from [the constitutional command of neutrality] by delegating the State's discretionary authority over [a required rehabilitation program for prison inmate addicts] to a group defined" by its literature and governing precepts as committed to encouraging acceptance of religious doctrine; yet the State "gives no assurance that [such] governmental power has been or will be exercised neutrally" (*id.*, at __, 114 S Ct, at 2487).

C.

In apparently concluding that no Establishment Clause violation occurred here because A.A. does not require a participant to adhere to a sectarian belief in God, but permits one to entertain a secular concept of a Higher Power devoid of religious content, the Appellate Division committed a second error by disregarding application of the second prong of the three-part test (the purpose-effect-entanglement test) for primary Establishment Clause analysis articulated in *Lemon v Kurtzman* (403 US 602, *supra*). Contrary to the implicit rationale of the Appellate Division, State-coerced adherence to a religious sect is not necessary to prove an Establishment Clause violation under any portion of the *Lemon* test (*id.; see also, Lee v Weisman, supra,* 505 US, at __, 112 S Ct, at 2664 [Blackmun, J., concurring]). Specifically, under the second prong of the *Lemon* test, State action is invalid if its "primary effect" is to advance or promote religion (*Lemon v Kurtzman,* 403 US, at 612, *supra*).

Since its articulation as the second prong of the *Lemon* test in Establishment Clause jurisprudence, there have been several important refinements to the "primary effect" test. First, a "primary" effect of advancing religion does not connote that the religious consequences of the State action must predominate over any secular objective or consequence. No measurement or weighing of the respective secular and religious effects is required. "We do not think that such metaphysical judgments are either possible or necessary. Our cases simply *do not support the notion that a law found to have a 'primary' effect to promote some legitimate end* under the State's police power *is immune* from further examination to ascertain whether it also has the *direct* and *immediate* effect of advancing religion" (*Committees for Public Education and Religious Liberty v Nyquist,* 413 US 756, 783 n 39 [emphasis supplied]). A violation also is established if the State action's "*inevitable effect* is to aid and advance" religion (*id.*, at 793 [emphasis supplied]).

In addition, later decisions construing the second prong of *Lemon* "have refined the definition of governmental action that unconstitutionally advances religion * * * * [by] pay[ing] particularly close attention to whether the challenged governmental practice has the purpose or effect of 'endorsing' religion" (*County of Allegheny v American Civil Liberties Union,* 492 US 573, 592). That concept " 'preclude[s] government from conveying or attempting to convey a message that *religion* or a particular religious belief is *favored or preferred*' " *(id.,* at 593 [quoting *Wallace v Jaffree,* 472 US 38, 70 (O'Connor, J., concurring)]). The prohibition against governmental endorsement of religion means "at the very least, [that government is barred] from appearing to take a position on questions of religious belief 'making adherence to a religion relevant in any way to a person's standing in the political community' " *(County of Allegheny v American Civil Liberties Union, supra,* 492 US, at 594 [quoting *Lynch v Donnelly,* 465 US 668, 687 (O'Connor,

J., concurring)]). An endorsement violating the Establishment Clause can be determined by examining whether the message that the government's practice communicates may be fairly understood as favoring or promoting religion (*id.*, at 595). That is, it must be ascertained whether "the challenged governmental action is sufficiently likely to be perceived by adherents of the controlling denominations as an endorsement, and by the nonadherents as a disapproval, of their individual religious choices" (*School Dist. of Grand Rapids v Bell,* 473 US 373, 390).

Applying the foregoing criteria we conclude that the inclusion of the A.A. 12 steps and other doctrines and meeting practices in a mandated, exclusive drug addiction and alcoholism rehabilitation program at the Shawangunk Correctional Facility constitutes the prohibited endorsement of religion violating the Establishment Clause. It is simply unimaginable that inmates in the inherently authoritarian atmosphere of a prison would not perceive that such a mandatory, exclusive program, facially containing expressions and practices that "ha[ve] always been religious" (*Engel v Vitale,* 370 US, at 424, *supra),* favors inmates who adhere to those beliefs, and symbolically condones the religious proselytizing those expressions literally reflect *(School Dist. of Grand Rapids v Bell, supra,* 473 US, at 390-391). Indeed, this very perception of the A.A. component of the ASAT program was what prompted the initial written response of a facility official to petitioner's grievance, stating upon reading the Twelve Steps and Twelve Traditions, that the facility did not offer a "program (therapeutic) without a religious background."

For all the foregoing reasons, a mandatory, exclusive ASAT addiction treatment program at the Shawangunk Correctional Facility incorporating the A.A. Twelve Steps methodology, credo and meeting practices, violates the Establishment Clause.

III

Before concluding this Opinion, we find it necessary to respond to some of the dissent's criticisms of our holding. First, the dissent misreads our decision in persistently characterizing it (a) as hostilely "root[ed] in a proposition" that A.A. itself and its religious practices and precepts are constitutionally "objectionable" (Dissent, Slip Opn, at 4; *see also, id.*, at 7, 15, 17); and (2) as implicitly holding that the Establishment Clause was violated merely by the "importation" (Dissent, Slip Opn, at 16), "permeation" (*id.*, at 15), "religious alchemy" and "profound absorption" (*id.*, at 29) of the incorporation of A.A. materials into the ASAT curriculum. The latter interpretation of our holding appears to underlie the dissent's criticism that we have found the ASAT curriculum to be "a dominating form of religious coercion" (Dissent, Slip Opn, at 19), and the dissent's suggestion that we have empowered petitioner to dictate the content of the ASAT curriculum " 'to [his] individual preferences' " (*id.*, at 16). This also appears to account for the dissenters' "puzzle[ment]" (*id.*, at 12) respecting our position that incorporation of A.A. components into a truly voluntary inmate drug rehabilitation program could validly be accomplished.

Neither of these two characterizations of our holding finds even inferential support, let alone express substantiation in the majority writing. To the contrary, we have repeatedly indicated throughout the decision that the decisive factor in our analysis was not the incorporation of A.A. doctrine and practices into the ASAT Program, but the facility's application of coercive pressure to participate in an exclusive inmate drug and alcohol treatment program having that component (*see, infra,* at 17-20, 22-23, 26, 32-34). Rather than condemning A.A. and its practices we specifically acknowledged A.A.'s "proven effectiveness" (*infra,* at 2). Our decree specifically prohibits only the coercive aspects of conditioning petitioner's eligibility for the

Family Reunion Program on attendance in the ASAT Program as presently constituted.

Second, pointing to the commendable secular purposes and effects of both the ASAT program and A.A. in the battle against alcohol and drug addiction, the dissent appears to conclude that any religious aspects of the incorporation of mandated A.A. devotional materials and practices are outweighed by the secular purposes and effects of ASAT and A.A. Thus, the dissenters list as "key" to their vote to affirm their evaluation that the ASAT Program and A.A. remain "*overwhelmingly* secular" (Dissent, Slip Opn, at 2 [emphasis supplied]); and repeatedly stress the "predominantly secular" "goals", "aims" and "purposes" of ASAT and A.A. (*see, id.*, at 2, 8, 17, 20, 21, 22, 24). The teaching of the Supreme Court decisions, as we have already noted, rejects subjective assessments purporting to quantify the respective religious and secular purposes and effects of governmental action (*see, Committee For Public Education and Religious Liberty v Nyguist,* 413 US 756, 783 n 39, *supra* ["Our cases simply do not support the notion that a law found to have a 'primary' effect to promote some legitimate end under the State's police power is immune from further examination to ascertain whether it also has the direct and immediate effect of advancing religion"]).

Alternatively, the dissent argues that we have too rigorously applied the reach of the Establishment Clause (Dissent, Slip Opn, at 6-7) and, relying upon Justice Brennan's concurring opinion in *McDaniel v Paty* (435 US 618, 638-639, 641) (Dissent, Slip Opn, at 15), attempts to bring this case within the rubric of precedents more loosely applying the Establishment Clause when strict enforcement would conflict with the values reflected in the Free Exercise Clause or the Free Speech Clause

of the First Amendment.[7] Thus, the dissent gives special emphasis to the portion of Justice Brennan's *McDaniel* opinion stating that the Establishment Clause "may not be used as a sword to justify repression of religion or its adherents from any aspect of public life" (435 US, at 641, *supra* [Dissent, Slip Opn, at 15]). These precedents are entirely inapposite to the instant case, or to our ruling in it. Our holding does not interfere with any inmate's free choice to avail him or herself of A.A. religious practices in a prison setting to combat alcohol or drug addiction, or freely to enter into the present ASAT program. Rather, our ruling identifies as the critically objectionable aspect of respondent's correctional policy here, the application of coercive pressure upon petitioner to attend and participate in a religious exercise at penalty of losing any possibility for cherished, expanded family contacts. Thus, we think more fitting to the issues here are the following excerpts from Justice Brennan's concurrence in *McDaniel v Paty*:

> Beyond these limited situations in which government may take cognizance of religion for purposes of accommodating our traditions of religious liberty, government

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[7]The dissent also invokes language in *O'Lone v Estate of Shabazz* (482 US 342, 349) (Dissent, Slip Opn, at 23), and relies upon it and other prison inmate cases (*id.*, at 26, 29) in which some limitations on Free Exercise and Free Speech rights of inmates have been upheld in balancing those interests against legitimate State penological interests. Moreover, the dissent also cites (*id.*, at 16-17) with approval *Boyd v Coughlin* (914 F Supp 828) wherein the U.S. District Court did apply a balancing test to an inmate's Establishment Clause claim (*see, id.*, at 831-832). Such balancing has never been applied by the Supreme Court in an Establishment Clause case. Adopting a baiancing approach here would be unprecedented and raise serious implications beyond the prison context.

> *may not use* religion *as a basis* of classification for the imposition of duties, *penalties, privileges* or *benefits.*
>
> * * *
>
> Fundamental to the concept of religious liberty protected by the Religion Clauses is the idea that religious beliefs are a matter of *voluntary choice* by individuals and their associations * * * (*McDaniel v* Paty, 435 US, at 639-640, *supra* [Brennan, J., concurring] [emphasis supplied]).

Indeed, where we particularly part company with the dissent is in the respective responses to the coercive aspect of correction facility policy regarding the ASAT Program and inmate/family visitation. As we have already quoted, the core principle of the Establishment Clause is that religious observance must be "a matter of voluntary choice" (*id.*, at 340), and that the State may not "*force* nor *influence* a person to go to * * * church against his will or force him to profess a belief" *(Everson v Board of Education, supra,* 300 US, at 15-16).

Even those scholars who urge a shift to a more flexible, accommodating approach to Establishment Clause jurisprudence than the present Supreme Court decisions would dictate, recognize the need for retaining the vitality of that principle. Thus, Professor Witte, in the same article relied upon by the dissent (*see,* Dissent, Slip Opn, at 13, 14), would continue to condemn accommodations of religion which "effectively *coerce public participation* in religious exercises such as *prayer*" (Witte, *The Essential Rights and Liberties of Religion in the American Constitutional Experiment,* 71 Notre Dame L Rev 371, 428 [emphasis supplied]). Nor would Witte limit the prohibition to school prayer cases, which the dissent suggests are *sui generis* and totally inapplicable here (Dissent, Slip Opn,

at 27-29). Rather, Witte applies a universal, enduring principle of voluntarism as the central meaning of the Establishment Clause, that to "effectively coerce" a person to attend religious exercises such as prayer violates the Constitution because "[p]arties will choose to participate in the prayer * * * not out of *voluntary* conviction, but because of the *civil* and *social advantages* attached to [it]" (Witte, *supra,* at 428 [emphasis supplied]; *see also, Welsh v United States,* 398 US 333, 356-357, *supra* [Harlan, J., concurring]; *Torcaso v Watkins,* 367 US 488, 495, *supra*).

The dissent, however, denies that conditioning eligibility for the Family Reunion Program on full attendance and participation in ASAT, including its A.A. component, was coercive, since petitioner "voluntarily chose the course of action that placed his agnosticism" above his desire to achieve extended family contacts and because the facility retained discretion to exclude him from the Family Reunion Program in any event (Dissent, Slip Opn, at 24-26). Such a narrow, grudging application of the anti-coercive core of the Establishment Clause is inconsistent with the case law, barring even State "influence" to attend a religious exercise (*Everson, supra).*

Likewise, in *Zorach v Clauson* (343 US 306)—a case invoked by the dissent (Dissent, Slip Opn, at 14, 23, 27) for the proposition that petitioner was not coerced by the threat of lost eligibility for the FRP Program—Justice Douglas, in rejecting the Establishment Clause claim, expressly relied upon the total absence of any influence by school authorities on a student's election to take religious instruction:

> The present record indeed tells us that the school authorities are neutral in this regard and do no more than release students who parents so request. If in fact coercion were used, if it were established that any one or more teachers were using their office *to persuade* or

force students to take the religious instruction, *a wholly different case would be presented* (*id.*, at 311 [emphasis supplied]).

The dissent's "voluntary choice" regarding a "discretionary" family visitation program rationalization is identical to the Maryland Court of Appeals' theory for upholding its State Constitution's test oath for eligibility for elective or appointive public office in *Torcaso v Watkins (supra)*, that is, that the petitioner was not under " 'compulsion' " [to believe in God because] he is not compelled to hold [public office]' " (367 US, at 495). The Supreme Court rejected that rationale, holding that, while a person may neither be compelled to hold nor have an abstract right to public office, that "cannot possibly be an excuse for barring him from office by state-imposed criteria forbidden by the Constitution" (*id.*, at 495-496).

Nor is the dissent's position consistent with the constitutional history of the Establishment Clause, which demonstrates an intention to protect religious voluntarism against even subtle governmental pressure. Thus, Justice Brennan in *School District of Abington Township (supra)*, in interpreting the Clause as a mandate to leave religious matters completely to the free conscience of the citizen, quoted the following from the Congressional debates on the Bill of Rights: " 'the rights of conscience are, in their nature, of peculiar delicacy, and will little bear the *gentlest touch of governmental hand* . . . ' " (374 US, at 231 [quoting Representative Daniel Carroll of Maryland during the debate upon the proposed Bill of Rights in the First Congress, August 15, 1789, I Annals of Cong 730] [emphasis supplied]).

Indubitably, the State through its Shawangunk Correctional Facility officials have applied far more than the "gentlest touch" to make petitioner violate his personal conscience by depriving him of opportunities for increased family visits because he

refused to attend and participate in A.A. activities heavily imbued with religious content. Therefore, the State's requirement that petitioner fully participate in the present ASAT Program in order to qualify for the Family Reunion Program violates the Establishment Clause, and cannot be permitted to stand.

Accordingly, the order of the Appellate Division should be reversed, without costs, and judgment granted in favor of petitioner prohibiting respondents from conditioning petitioner's participation in the Family Reunion Program on attendance in the subject Alcohol and Substance Abuse Treatment Program, as presently constituted.

BELLACOSA, J. (dissenting):

Judge Ciparick and I would affirm the lower courts' rejection of petitioner's lawsuit. The Majority centers its reversal and grant of relief in this case on coercion. That must, however, be coupled with a finding that the Alcohol and Substance Abuse Treatment Program ("ASAT") of the New York State Department of Correctional Services fosters a religious practice in the first place. The building blocks rest also on the attribution to the ASAT Program of a predicate of "religious-oriented practices and precepts" (Majority opn, at 2, *et seq.*) culled together from the Alcoholics Anonymous ("A.A.") Twelve Step paradigm. The combination, tied together by a tenuous application of a coercion concept, produces a declaration that the Establishment of Religion Clause of the United States Constitution has been violated (US Const, 1st Amend).

We conclude that the allegedly compelled religious root—the deistic symbols and allusions selected principally from A.A. literature concerning its Twelve Step Program—does not justify the judicial relief that ultimately excuses petitioner-appellant-inmate on First Amendment grounds from the benefits of the ASAT Program, when he wishes to avail himself of the Correctional Department's Family Reunion (expanded visitation) Program. The key premises of our votes to affirm include:

- The ASAT Program and this case, analyzed within the three-pronged criteria of Establishment Clause review (*see, Lemon v Kurtzman,* 403 US 602) and recent, relevant authorities, do not breach constitutional boundaries;

- The ASAT Program is inappropriately analogized to the uniquely sensitive public school settings under First Amendment jurisprudence;

- The ASAT Program is a rationally justified and voluntary means of serving the important and predominantly secular State goal of treating and reducing inmate substance abuse;

- The ASAT Program, to the extent that it incorporates suggested aspects of the A.A. Twelve Step Program that some may perceive as somewhat religious, remains overwhelmingly secular in philosophy, objective and operation;

- Petitioner-appellant's challenge and proffered record lack the quality and quantum necessary to justify this first impression holding.

I.

ASAT is the primary umbrella program operated by the New York State Department of Correctional Services to provide treatment options for chemically dependent inmates. Not all of the substance abuse programs offered by the Department are considered to be ASAT Programs; only those operated or overseen by ASAT staff and complying with program standards are treated as such. According to the ASAT Program Operations Manual, the primary mission of the ASAT is "[t]o prepare chemically dependent inmates for return to the community and to reduce recidivism * * * by providing education and counseling focused on continued abstinence from all mood altering substances and participation in self-help groups based on the 'Twelve Step' approach." The ASAT philosophy declares that it uses the "12-Step approach to recovery" and that "[b]y working the 12 *suggested* steps" a person achieves "a realistic understanding of himself/herself" (emphasis added). It continues: "The 12 steps of AA act as a *guide* which provide the tools

to build a new way of life without the use of alcohol and/or drugs, one day at a time" to prevent relapses upon release (emphasis added).

The services offered through ASAT involve three main components. First, treatment, education and family counseling services are formally part of the ASAT Program. Second, participants are urged to use other academic, vocational, and social or medical services made available to them although not part of the formal ASAT Program. Third, enrollees are required to participate in independent, volunteer-led self-help groups. The self-help group component provides the sole and slender nexus for the controversy here and declaration of unconstitutionality. In that respect, the ASAT Program Manual states that "[i]t should be noted that self-help groups such as A.A. and N.A. *are not part* of the formal ASAT Program but are an important *adjunct* to it. The groups must be *separated* from the ASAT Program and not supervised or chaired by ASAT staff. Affiliation and employee involvement is counter to self-help group traditions" (emphasis added).

The basic ASAT treatment method encompasses approximately 330 hours of counseling and therapy spread over a 26-week period. This includes mostly lectures, seminars, group discussions, and counseling focused on addiction and recovery. Self-help group participation is not a predominant part and, indeed, constitutes an attenuated feature of the total ASAT experience, consisting of only 26 hours of the total program period. The ASAT Program, rather than commanding some doctrinal hegemony, is thus notable for its diversity, variety, voluntariness and nuances interplay of various components.

The center of gravity for the resolution of this lawsuit is a finding that the ASAT Program unconstitutionally compels petitioner to join in religious practices as a condition to his receiving the discretionary benefit of the Correctional Department's extra visitation program. The ASAT Program is thus

charged with imposing a State endorsement of and entanglement with practices of A.A. deemed religiously intrusive and objectionable. The analysis expressly refers to deistic expressions from A.A.'s Twelve Step modality. Our interpretation of this integral dispositive rationale specifically and fairly identifies its root in a proposition that A.A. advances "religious-oriented practices and precepts" that urge "performance of quite traditional religious devotional exercises" (Majority opn, at 2, 21).

A brief overview of A.A. history and its operating principles contradicts the predicate assumptions that drive petitioner's tenuous theory. A.A. was founded in 1935 as a general concept under which community groups of independent individuals voluntarily join together in common experience and discipline to try to stay sober. The two basic texts of A.A. are *Alcoholics Anonymous* (Alcoholics Anonymous World Services, Inc. [3d Edition, 1976] ["The Big Book, The Basic Text for Alcoholics Anonymous"]) and *Twelve Steps and Twelve Traditions* (Alcoholics Anonymous World Services, Inc. [3d Edition, 1981]), which were originally published in 1939 and 1952, respectively. Substantially, if not overwhelmingly, they reflect suggested secular and spiritual guideposts, not compulsory religious commandments or tenets of some New-Age or even Old-Time religion.

As the preface to the "Big Book" states, "[b]ecause this book has become the basic text for our Society and has helped such large numbers of alcoholic men and women to recovery, there exists a sentiment against any radical changes being made in it. Therefore, the first portion of this volume, describing the A.A. recovery program, has been left untouched in the course of revisions made for both the second and the third editions." A.A. has thus refrained from revising its founding texts to conform to politically correct themes and times or to excise expressions objectionable to the school of "secular individualism" (Dent, Book Review, 46 J of Legal Educ. 130, 131-134 [1996]).

The United States Supreme Court has itself observed that in considering the principles underlying the Establishment Clause, there may be a " 'tendency of a principle to expand itself to the limit of its logic'; such expansion must always be contained by the historical frame of reference of the principle's purpose, and there is no lack of vigilance on this score by those who fear religious entanglement in government" (*Walz v. Tax Commn. of the City of New York,* 397 US 664, 678-679, *quoting* Cardozo, *The Nature of the Judicial Process,* reprinted in *Selected Writings of Benjamin Nathan Cardozo* [Hall ed. 1947], at 127). Thus, "the Court consistently has declined to take a rigid, absolutist view of the Establishment Clause. We have refused 'to construe the Religion Clauses with a literalness that would undermine the ultimate constitutional objective *as illuminated by history*' [emphasis in original]. * * * In our modern, complex society, *whose traditions and constitutional underpinnings rest on and encourage diversity and pluralism in all areas,* an absolutist approach in applying the Establishment Clause is simplistic and has been uniformly rejected by the Court" (*Lynch v. Donnelly,* 465 US 668, 678]emphasis added]; *see also, Walz v. Tax Commn. of New York City,* 397 US 664, 671, *supra*; 4 Rotunda and Nowak, Constitutional Law: Substance and procedure §21.3 at 459 [2d ed 1992]; Kurland, *Religion and the Law of Church and State and the Supreme Court,* at 111 [1961]).

Rigidity is eschewed because "[f]ocus[ing] exclusively on the religious component of any activity would inevitably lead to its invalidation under the Establishment Clause" (*Lynch v Donnelly,* 465 US 668, 680, *supra).* The Supreme Court has thus stated that "our precedents plainly contemplate that on occasion some advancement of religion will result from governmental action" (*Lynch v Donnelly, supra,* at 683). The Court has made it abundantly clear, however, that " 'not every law that confers an 'indirect,' 'remote,' or 'incidental' benefit upon [religion] is, for

that reason alone, constitutionally invalid' " (*Lynch v. Donnelly, supra,* at 683, *quoting Committee for Public Education & Religious Liberty v Nyquist,* 413 US 756, 771). We are satisfied that perceived religious aspects of A.A. transmuted into ASAT are indirect, remote and incidental, and neither compulsory nor mandatory (*see, Lynch v Donnelly, supra*). Yet, the Majority rules that the United States Constitution and Supreme Court precedents demand a virtually pure secularity (Majority opn, at 2, 18, 23). In any event, coercion alone cannot transform such incidentalism into an Establishment Clause violation. There is no theory, case or authority that we know of for a theory with that kind of trumping quality (*see generally,* Glendon, *Law, Communities, and the Religious Freedom Language of the Constitution,* 60 Geo Wash L Rev 672, 679 [1992]; *see also,* Gedicks, *The Rhetoric of Church and State,* at 63-65, 72, 82, 120-121 [1995]).

When A.A.'s Twelve Steps are drawn across the Establishment Clause divide, a challenger must bear a very high burden of demonstrating unconstitutionality beyond a reasonable doubt. The objectant must present more than superficial analysis of the operating principles of the challenged State exertion.

A fair review of the totality of the A.A. message and mission reasonably supports our acceptance of its published and principled representation that its renowned singular aim is simply to help people help themselves in attaining and maintaining sobriety — a salutary public objective pursued through personal, voluntary and secular means. Empirical data makes this goal an especially demonstrable imperative for a rehabilitative correctional facility population. Our examination of the deistic references and semantical icons form the A.A. Twelve Steps discloses a concededly spiritually-accented landscape, but not a constutionally objectionable religious core.

The A.A. Traditions helpfully illustrate the primary and principal effect of the ASAT Program. Tradition Six states, "An

A.A. group ought never endorse, finance or lend the A.A. name to any related facility or outside enterprise, lest problems of money, property and prestige divert us from our primary purpose." The "Long Form" of Tradition Ten continues this theme, stating: "No A.A. group or member should ever, in such a way as to implicate A.A., express any opinion on outside controversial issues—particularly those of politics, alcohol reform, or *sectarian religion.* The Alcoholics Anonymous groups oppose no one. Concerning such matters they can express no views whatever" (emphasis added). These explicit declarations against sectarian preference or promotion are disdained as irrelevancies in the Majority's dispositional analysis (Majority opn, at 9, 19 n5) and turned into a distortion of our dissenting viewpoint (Majority opn, at 14).

Notably, too, the reliance upon speculative assertions of some prison staff that ASAT might harbor some religious features based on their personal reading of some of the literature is misplaced and does not materially aid in the resolution of this case. Unfounded, ambiguous and unofficial conclusions provide no basis for arriving at definitive findings regarding State action, with the dispositional and precedential consequences of this ruling.

II.

Our differences, however, must stay focused on the Establishment Clause and the constitutional issue, not on the whole or even selected excerpts of the A.A. message and literature, or A.A. projected into ASAT through A.A.'s original, historical, evolving or modern visage or operational reality. The Supreme Court has stated that "a determination of what is a 'religious' belief or practice" under the Constitution "may present a most delicate question," but that if the belief turned on the "subjective evaluation and rejection of the contemporary secular values," such beliefs would not rest on a religious basis because the

choice made by the individual would then be "philosophical and personal rather than religious" (*Wisconsin v. Yoder*, 406 US 205, 215-216; *see also*, Tribe, American Constitutional Law §14-6, at 1183 [2d ed, 1988]).

A.A. principles unquestionably arise from a secular philosophy and psychology, which espouse a fellowship of different individuals sharing their experiences in a confidential and voluntary manner that can mutually reinforce the individual desire and effort to overcome a terrible addiction and propensity more readily than if people tried to survive and conquer the disabling disease alone. The transcendent, human, spiritual qualities of this commitment and endeavor do not thrust the experience into a religious realm. Nor does the recognition and acceptance of some "Higher Power," outside of the "Ego," constitutionally connote a theistic ontology (*see*, Glendon, *op. cit.*, at 679).

Professor Stephen Carter has noted that the religious characterization with which A.A. is sometimes cloaked does not come from its throngs of participants and beneficiaries, and that constitutional hostility to religion may be lessening (*see*, Carter, *The Culture of Disbelief* [1993], at 121 n*, and in context at 120-123; Carter, *The Resurrection of Religious Freedom?*, 107 Harv L Rev 118, 119, 130-132, 142; *see also, County of Allegheny v. American Civil Liberties Union, Greater Pittsburgh Chapter*, 492 US 573; *School Dist. of Abington Twp., Pennsylvania v. Schempp*, 374 US 203, 205; Gedicks, *Public Life and Hostility to Religion*, 78 Va L Rev 671; Gedicks, *The Rhetoric of Church and State* [1995]).

Professor Philip Kurland, in a seminal work, urged "neutral principles" of adjudication in such controversies and offered these insights:

> [T]he wisdom of the framers of the first amendment [i]s in their objectives of keeping the church free from

> domination by government and the state free from alliance with religion. * * * *The freedom and separation clauses should be read as stating a single precept: that government cannot utilize religion as a standard for action or inaction because these clauses, read together as they should be, prohibit classification in terms of religion either to confer a benefit or to impose a burden.* This test is meant to provide a starting point for the solution to problems brought before the Court, not a mechanical answer to them (Kurland, *op. cit.*, at 111-112 [emphasis added]).

Despite the competition of vocabulary and classifications between secularism versus communitarianism and neutrality versus accommodation, no one should lose sight of the relevant analytic framework and fact that this petitioner's entire claim is predicated on the Establishment of Religion Clause. He makes no complaint whatsoever of restriction of his Freedom to Exercise religion or nonreligion. Yet, the Majority's vital building block is a coercion element, applied in a novel fashion as a matter of law that echoes between the twin chords of the First Amendment's religion clauses. This is far beyond the coerced formal prayer in a school setting in *Lee v Weisman* (505 US 577) relied on so heavily by the Majority (Majority opn, at 20, n6; *contrast, Zorach v Clauson,* 343 US 306).

We join, nevertheless, in the Majority's hope for no broader precedential and practical sweep than necessary, and that public officials will continue to recognize and utilize valuable treatment modalities offered through instrumentalities like ASAT and A.A. At the same time, we remain legitimately concerned about how they do so in light of the reasoning that leads to the precise holding. For example, if purely voluntary, unconditional participation in an ASAT-A.A. Program satisfies all the *Lemon* prongs and, thus, would not constitute an Establishment Clause

violation in that universe and fact pattern, how and why does the addition of a dominant coercion element transcend and neutralize the satisfaction of the core criteria on Establishment grounds? Stated conversely, if coercion of the distinctive kind asserted here is not present, how and why, then, would the same ASAT-A.A. Program, in a purely voluntary regimen, escape the Establishment Clause cloud engendered by the whole of the rationale of this case? The answers to these troublesome queries, for us at least, are elusive, unpersuasive and puzzling.

III.

The Establishment Clause in ten words declares that "Congress shall make no law respecting an establishment of religion" and is applicable to the States through the Fourteenth Amendment (US Const, 1st 14th Amends; *School Dist. of Abington Twp., Pennsylvania v Schempp*, 374 US 203, 205, *supra*). The Supreme Court realistically recognizes that total separation of religion and state in a pluralistic society with this Nation's history and traditions is not possible or even desirable.

Towards the preservation and recognition of renowned laudatory ends and multifaceted protections, the Supreme Court has stood by a test to determine whether particular government endorsements or entanglements with religion are prohibited by analyzing "the character and purposes of the institutions that are benefited, the nature of the aid that the State provides, and the resulting relationship between the government and the religious authority" (*Lemon v. Kurtzman*, 403 US 602, 615, *supra*). In *Lemon*, the Supreme Court declared the well-known tripartite test: "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster 'an excessive governmental entanglement with religion' " (*id.*, at 612-613 [citations omitted]).

Individual Justices of the Supreme Court have expressed varying qualms about the continued usefulness and viability of *Lemon* (*see, County of Allegheny v American Civil Liberties Union, Greater Pittsburgh Chapter*, 492 US 573, 655 [Kennedy, J., concurring in part and dissenting in part], *supra*; *Edwards v Aguillard*, 482 US 578, 636-640 [Scalia, J., dissenting]; *Lynch v Donnelly*, 465 US 668, 688-689, *supra* [O'Connor, J., concurring]). The evident unevenness generated by the *Lemon* approach, as reflected in the Supreme Court's latest cases, may be rectified someday and, in its place, a less separationist and more communitarian and beneficial approach may emerge (*see especially*, Witte, *The Essential Rights and Liberties of Religion in the American Constitutional Experiment*, 71 Notre Dame L Rev 371, 425-430 [1996]; *see e.g., Rosenberger v Rectors and Visitors of the University of Virginia*, _ US _, 115 S Ct 2510, 2522-2523; *Capitol Square Review & Advisory Board v Pinette*, _ US _, 115 S Ct 2440; *Bowen v Kendrick*, 487 US 589). The Supreme Court, however, has for the most part held onto the *Lemon* set of guideposts for Establishment Clause jurisprudence, analysis and application (*see, Lamb's Chapel v Center Moriches Union Free School Dist.*, _ US _, 113 S Ct 2141, 2148 n7).

The Majority's overriding emphasis on a coercion prong, however, is disconcerting, especially when applied in this dispositional setting (Majority opn, at 7 and 17; *compare, Zorach v. Clauson*, 343 US 306, 311-312, *supra*; *Grumet v Board of Educ.*, 81 NY2d 518, 527, *affd* _ US _, 114 S Ct 2481; *New York State School Bds. Assn. v Sobol*, 79 NY2d 333, 339; *Matter of Klein [Harnett)*, 78 NY2d 662, 666; *see also*, Witte, *op. cit.*, at 426-427). Indeed, the primary-and-principal-effects prong of *Lemon* seems to be altered and diluted in a way that may jeopardize other State actions under *Lemon* (Majority opn, at 2, 17; Gedicks, *op. cit.*, at 72-73).

All experts, scholars and commentary aside, in any event, the First Amendment and the Supreme Court cases dominate.

Petitioner's core claim thus ought to be meticulously examined to see how it measures up against the existing array of authorities—not petitioner's theoretical construct. His complaint centrally relies upon the importation into the ASAT Program of assertedly objectionable religious symbols from the A.A. Twelve Step method. That *is his lawsuit*, not our characterization of it.

Notwithstanding the Majority's objections to our dissenting viewpoint that analyzes the case as it comes to us, coercion—without a linked religious nucleus that emerges as constitutionally offensive—cannot alone justify the reversal in this case. After all, everything this appellant-petitioner-prisoner does or does not do is largely governed by the innately coercive atmosphere of his incarceration. He is in a correctional facility. He should not be allowed in the circumstances of this case to wield the Establishment Clause "as a sword to justify repression of religion or its adherents from any aspect of public life" (*McDaniel v Paty*, 435 US 618, 641; *see generally*, Carter, *The Culture of Disbelief*, *op. cit.*). Yet, petitioner is allowed to do just that when he asserts, and the Majority agrees, that the Twelve Steps of A.A. unconstitutionally compel him to participate in a collection of content-based, "religious-oriented practices and precepts," that by permeation into ASAT are together deemed to violate *Lemon*, solely because he wishes and chooses to apply for privileges permitted under a discretionary expanded visitation regulation.

Petitioner, it should be noted, concedes that ASAT's overriding purpose to treat and reduce substance abuse among prison inmates is secular and, therefore, satisfies *Lemon*'s first criterion (*see, Boyd v Coughlin*, 914 F Supp 828, 832 [NDNY 1996]). Thus, petitioner's claim, taken in the terms of his own argument, rises or falls under *Lemon*'s second and third criteria, that is, whether ASAT, through A.A., principally or primarily advances religion or impermissibly entangles government with religion.

Whether the primary effect of a governmental policy advances or inhibits religion, in turn, depends on whether the "challenged governmental action is sufficiently likely to be perceived by adherents of the controlling denominations as an endorsement, and by the nonadherents as a disapproval, of their individual religious choices" (*School Dist. of the City of Grand Rapids v Ball,* 473 US 373, 390). Mere exposure to religious ideas or pure personal subjectivity do not breach the constitutional "blurred, indistinct and variable barrier")*Lemon v. Kurtzman,* 403 US 602, 614, *supra*), nor do individuals possess constitutional rights and power to force government "to tailor public school programs [or the ASAT curriculum, we would respectfully submit] to individual preferences, including religious [or nonreligious] preferences" (*see, Ware v. Valley Stream High School Dist.,* 75 NY2d 114, 125, *supra*). This is precisely what petitioner succeeds in doing by this case. Indeed, not "every state action impacting religion is invalid if one or a few citizens find it offensive. People may take offense at all manner of religious as well as nonreligious messages, *but offense alone does not in every case show a violation"* (*Lee v. Weisman,* 505 US 577, 597, *supra* [emphasis added]).

The only references in the ASAT materials to the actual text of the A.A. Twelve Steps—which we believe do not constitute an unconstitutional State-compelled participation in religious practices—are found in Attachment E to the Operations Manual, entitled "ASAT Program Curriculum." The implementation and underlying focus of the counseling provided pursuant to these steps, however, is functionally and decidedly nonreligious (so far as we know on this record), no matter what the incorporated deistic references semantically purport to invoke, suggest and portray.

The petitioner objects particularly to the incorporation by reference of A.A. Steps Three, Five, Six, Seven, Eleven and Twelve into the ASAT curriculum, claiming that parts of their

text foster or force a theistic point of view upon his agnostic beliefs. Though the Majority agrees with petitioner's argument, we disagree; finer line-drawing is the more progressive and enlightened trend and task (*see, Rosenberger v Rectors and Visitors of the University of Virginia*, _ US _, 115 S Ct 2510, 2526 [O'Connor, J., concurring], *supra*). Thus, petitioner's claims are not supportable in this case and should not be remediable by the constitutionally-rooted relief granted here.

The ASAT curriculum states that the goal of Step Three is "[t]o explore the concepts and barriers in accepting a power beyond self" as well as "[e]xploration of self-centeredness," and that the group counseling focus is to "explore issues of fear (feelings) and its relationship to chemical use." Although the list of *suggested discussion topics* includes "barriers to faith" and "prayer and meditation," no documentation by the party bearing the heavy burden of proof in such a case is presented that these are anything more than talking points and topics. It cannot be overlooked that, in this group setting, counselors must be prepared to handle inquiries from and concerns of all members of the group, religious and nonreligious alike, and that inhibiting individual inmates from expressing personal views in a secular program may impinge upon their free exercise, free speech and free association rights (*see, Rosenberger v Rectors and Visitors of the University of Virginia, supra*, at 2513, 2520, 2523; *Capitol Square Review & Advisory Board v Pinette*, _ US _, 115 S Ct 2440, 2448-2449, *supra*). In a diverse and pluralistic universe, including a prison environment, a curriculum's identification of faith and neutrally described feelings of hope, fear, and trust do not dissipate or override the significantly secular quality within the overall treatment regimen. Nor do they project religiosity. Moreover, spirituality is not synonymous with religion generally or constitutionally, no matter what Webster's dictionary may acontextually assemble as a general definition (Majority opn, at 9).

Steps Eleven and Twelve focus on discussions of the effect of addiction on others and continue to maintain a sense of momentum towards the freedom from dependency developed with the help of the program and its participants. Step Eleven does refer to "prayer and meditation" and "contact with God," but then identifies the goal as: "[A]ssist[ing] in understanding the relationship between disease and its effects on the next generation" and "viewing parenting in terms of recovery behavior." Step Twelve refers to a "spiritual awakening," but rather than having any formalized religious significance or content, the goal of this step is a "[p]ersonal exploration of the feelings related to leaving treatment (and prison)." ASAT is, thus, thoroughly free of religious organization, theses, ritual or doctrine, as expressly ordained by its curriculum. The group discussions are cued to family and recovery issues in a therapeutic and nonreligious manner. The talking points accompanying these A.A. Steps do not implicate religious proselytization or preference, except by petitioner's ingeniously subjective attenuation in this case—and that does not rise to the level of a constitutionally-coerced religious entrapment of this petitioner.

In sum, the Majority finds that the ASAT "curriculum" suffers from a dominating form of religious coercion and, thus, declares it constitutionally encumbered, sufficiently to justify the final decree of this case. The curriculum focuses principally on assisting inmates on their voyages of self-discovery away from addiction to self-awareness and recovery, and the personal, psychological, social and spiritual means to maintain that state of sobriety or avoidance of dependency once outside the prison walls. Yet, the evidence submitted by petitioner to the courts below to support the constitutional nullification consists principally of the A.A. Twelve Steps sheet distributed as a "*suggested handout*" to ASAT participating inmates in an attempt to explain non-ASAT self-help group dynamics. Thus, the inordinate constitutional inflation of A.A. texts, pamphlets

and personal parables to superimpose an assertedly compulsory religious exertion onto petitioner's participation in ASAT (the only Program at issue in this lawsuit, in which A.A. is not a party) is seriously flawed because it is not documented by a customary and expected as-applied record basis.

Persuasively, other courts have concluded that A.A. practices are not constitutionally religious, although they may partake of a blend of secular and spiritual qualities (*see, O'Connor v State of California,* 855 F Supp 303; *Stafford v. Harrison,* 766 F Supp 1014, 1016; *Feasel v Willis,* 904 F Supp 582, 586). The District Court in *O'Connor* found that it was "undisputed that the primary purpose of requiring attendance at self-help meetings such as A.A. is to prevent drunk driving and the tragic injuries and deaths that result from it, while at the same time providing treatment for individuals with substance abuse problems. *The 'principal and primary effect' of encouraging participation in A.A. is not to advance religious belief but to treat substance abuse*" (*O'Connor v State of California, supra*, at 307 [emphasis added]).

Similar reasoning was employed in the recent decision of *Boyd v Coughlin* (914 F Supp 828 [NDNY 1996], *supra*), which dismissed an inmate's complaint alleging that the ASAT program violated both the Establishment and Free Exercise components of the Religious Clause. The court noted that "the expressly stated principal and primary goal of the [ASAT] program is the preparation of chemically dependent inmates for return to the community and to reduce recidivism" (*id.*, at 833). In dismissing the plaintiff's claim, the court "determine[d] that there is no material question of fact as to whether the principal and primary purpose of [ASAT] program is to promote or inhibit religion" (*id.*).

Petitioner and the Majority instead misdirect *Warner v Orange County Department of Probation* (870 F Supp 69). In examining that plaintiff's Establishment Clause claim, the

District Court stated that its inquiry was limited to "whether the A.A. program *as plaintiff experienced it was essentially religious in nature*" (*id.*, at 70 [emphasis added]). It found that the plaintiff had established that "[g]roup prayer was common at the A.A. meetings plaintiff attended" and that "those attending the meeting were strongly encouraged to pray," and therefore concluded that "the A.A. program *that plaintiff experienced* placed a heavy emphasis on spirituality *and prayer*, in both conception and in practice" (*id.*, at 71 [emphasis added]). In finding that the A.A. program *as applied* in that case had a direct religious essence and particularized experience, the District Court limited its ruling, stating, "the testimony and evidence *in this case* support the finding that the A.A. *meetings the plaintiff attended* were the *functional equivalent of religious exercise*" (*id.*, at 72 [emphasis added]). Additionally, *Warner* expressly declined to apply the *Lemon* test (*id.*, at 73 n2). Thus, it is of no value because it avoided the *Lemon* test and was decided on the unique as-applied facts evidenced in a Federal trial court.

When a "program or regulation has a sufficiently secular effect" and the "secular impact is sufficiently separable" from any conceivable religious impact, no Establishment Clause violation is presented (*see*, Tribe, *op. cit.*, §14-10, at 1216). In this case, petitioner has failed even minimally to demonstrate that the primary and principal purpose of the ASAT Program is to compel advancement of constitutionally implicated religious practices or to stifle agnostic or atheistic preferences.

IV.

Petitioner also argues, and the Majority singularly accepts, that the petitioner is "compelled" to attend the ASAT Program, and that this by itself shows that the primary purpose and effect

of ASAT becomes one of advancement of religious practices that violates Establishment of Religion strictures. This argument and analysis are factually and legally incorrect and inapplicable to this case. First, coercion is not an abstraction and must be particularized. Second, the ASAT Program is initially voluntary and intrinsically discretionary.

This situation is not at all appropriately analogized to school prayer settings (*see, infra* Part V). The Supreme Court has stated that "while proof of coercion might provide a basis for a claim under the Free Exercise Clause, it [is] not a necessary element of any claim under the Establishment Clause" (*Committees for Public Education & Religious Liberty v Nyquist,* 413 US 756, 786, *supra*; *see also, School Dist. of Abington Twp., Pennsylvania v Schempp,* 374 US 203, 223, *supra*; *County of Allegheny v American Civil Liberties Union, Greater Pittsburgh Chapter,* 492 US 573, 597 n 47, *supra*; *Engel v Vitale,* 370 US 421, 430; *compare, Zorach v Clauson,* 343 US 306, 311-312, *supra*). Indeed, the special circumstances of prison settings prompted the Supreme Court to hold and pointedly observe:

> "Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system." *Price v Johnston,* 334 U.S. 266, 285 (1948). The limitations on the exercise of constitutional rights arise both from the fact of incarceration and from valid penological objectives—including deterrence of crime, *rehabilitation of prisoners,* and institutional security (citations omitted). * * * "[W]hen a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." *Turner v Safley, ante,* at 89. This approach ensures the ability of corrections officials "to anticipate security problems and *to adopt innovative*

> *solutions to the intractable problems of prison administration," ibid., and avoids unnecessary intrusion of the judiciary into problems particularly ill suited to "resolution by decree"* (*O'Lone v Estate of Shabazz,* 482 US 342, 348-350 [emphasis added]).

Petitioner admitted in his original grievance (before a lawsuit and this appeal ensued) that he was not "being forced to attend the [ASAT] program, but my attendance is required if I intend to continue participation in the FRP program." Thus, the institutional and constitutional compulsion of which petitioner now complains must be considered within the qualifying criteria for the discretionary expanded visitation program. This crucial constitutional distinction—the prisoner has an initial choice whether to participate at all in the extended visitation program and the prison officials correspondingly have wide discretion to regulate the participants—is disregarded in the resolution of this key aspect of this appeal.

The Family Reunion Program grants some inmates the opportunity to receive selected visitors for extended time periods (7 NYCRR 220.1). Eligibility is dependent on satisfying specified criteria, including a minimum length of stay at a correctional facility and a clean disciplinary record (7 NYCRR 220.2[a] & [b]). A relevant feature in this case is attendance by inmates at therapeutic treatment programs related to their particular offenses or overall histories (7 NYCRR 220.2[3][ii]). Because of appellant's admitted heroin use, correctional authorities properly invoked this regulation to require his participation in ASAT for treatment of his addiction (see, 7 NYCRR 220.2[3][ii]; 7 NYCRR 220.8).

Appellant's claim that this requirement legally converts his attendance and participation in the ASAT Program into a compulsory religious exercise, with Establishment Clause implications and consequences, does not withstand scrutiny. He

voluntarily chose the course of action that placed his agnosticism and nonbeliefs at risk because he wished to receive something he is not unqualifiedly entitled to from the State. Yet, he wins this lawsuit and the State is charged with compromising his First Amendment Establishment Clause rights.

In *Matter of Doe v Coughlin* (71 NY2d 48), this Court stated that:

> Given the present regulatory scheme of the Family Reunion Program, [inmates] could have *no legitimate expectation* that they would be afforded [visits]. * * * Although the regulations establish guidelines, the guidelines do not create an entitlement of [visits] because the review *system is heavily discretionary* and holds out no more than the possibility of [visits]. * * * Moreover, even though an inmate has previously been approved and participated in the program, there can be no legitimate expectation of continued participation because the regulations provide that inmates must reapply each time they seek a visit, and each application is subject to a new discretionary review" (*id.*, at 55-56 [emphasis added]).

This significant precedent from this Court bearing directly on the part of the analysis that the Majority self-describes as the dispositive feature of its rationale—coercion—is left entirely unanswered and substantially deflected.

Contrary to petitioner's present coercion claim, he suffers no subjugation to unconstitutionally offensive religious practices or influences, even if ASAT and A.A. were deemed to harbor proscribed religious attributes in some constitutionally cognizable sense. The correctional officials exercised appropriate regulatory authority over petitioner's participation in a discretionary visitation program, so long as he also availed himself of

a therapeutic program to treat his undeniable substance abuse history that might then earn him the privilege of such extra visitations. This is an appropriate, not "narrow" or "grudging" limitation on petitioner's expectations and entitlements, because the privilege of special visitations is necessarily circumscribed by the threshold circumstance of his incarceration, the nature of the visitation program and the individualized discretionary assessment (Majority opn, at 33; *see, Matter of Doe v Coughlin*, 71 NY2d, *supra*, at 58, *supra; see also, Matter of Rivera v Smith*, 63 NY2d 501, 510; *O'Lone v Estate of Shabazz*, 482 US 342, 348, *supra*).

A keen parallel for this aspect of the case may be drawn from *Hamilton v Regents of the Univ. of California* (293 US 245). The Supreme Court found no privileges and immunities or due process violations predicated on plaintiffs' objection on religious and conscientious grounds to a California statute requiring enrollment and completion of a military science and tactics course as a condition to attending the State's university. Justice Cardozo aptly added his "extra word" to the Court's holding in his inimitable voice:

> Manifestly a different doctrine would carry us to lengths that have never yet been dreamed of. * * * *The right of private judgment has never yet been so exalted above the powers and the compulsion of the agencies of government.* One who is a martyr to a principle—which may turn out in the end to be a delusion or an error—does not prove by his martyrdom that he has kept within the law (*id.*, at 268 [Cardozo, J., concurring] [emphasis added]).

V.

Petitioner also presses that the ASAT Program violates the Establishment Clause in that it is similar to requiring public

school students to participate in mandatory prayer. This argument, expressly endorsed by the Majority, should be flatly rejected. Initially, it must be noted that the petitioner has never claimed that he was required or even urged as part of the ASAT Program to pray or even privately meditate in some religious mode. Thus, at the outset, the ASAT Program can by no stretch of the argumentative method be analogized to the sectarian prayer setting and activity which the Supreme Court condemned as a "state-sponsored religious exercise" in *Lee v Weisman* (505 US 577, 592, *supra*) and *Engel v Vitale* (370 US 421, 424, *supra*). The Majority's transference of these two cases concerning *formal prayer* in *public school settings* into this case is particularly unpersuasive.

This should be contrasted to *Zorach v Clauson* (343 US 306, *supra*), for example, where New York's released time program was upheld. It allowed pupils to leave their public schools during school hours, but only on condition and for compulsory attendance at religious instruction. The Opinion of the Court repelled the Establishment Clause challenge and explicitly rejected the argued "coercion" element as irrelevant. Its analysis is even more pertinent to this case, because neither formal public school prayer nor public financial aid to secular religious schools is implicated here. Those features make the instant case exceptionally different from the authorities so intensely relied on by the Majority.

The Supreme Court has stated that "there are heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools. Our decisions * * * recognize, among other things, that prayer exercises in public schools carry a particular risk of indirect coercion. The concern may not be limited to the context of schools, but it is most pronounced there" (*Lee v Weisman, supra,* at 592 [citations omitted]). In *Lee,* the Court even drew the ironically apt distinction between imposing religion on

children and the choices open to adults, adding that it did "not address whether [the] choice is acceptable if the affected citizens are mature adults, but we think the State may not, consistent with the Establishment Clause, place primary and secondary school children in this position" (*id.*, at 593).

The reasoning that likens a prison environment to a school's "inherently authoritarian atmosphere" and prisoners to pupils is wrong. Fundamentally, among other considerations, this ignores the maxim that heightened constitutional analysis governs the protected enclave of students in schools, in contradistinction to the differentiated constitutional protections preserved for mature adults in prisons (*see, O'Lone v Estate of Shabazz,* 482 US 342, 349, *supra*; *see also, Pell v Procunier,* 417 US 817).

The ASAT Program finally suffers no excessive entanglement between State and religion under *Lemon's* third prong. The assertion of a "delegat[ion] of the State's discretionary authority" (Majority opn, at 24) is factually unsupportable on this record. Also, *Board of Educ. v Grumet* (_ US _, 114 S Ct 2481, *supra*) is totally inapposite in that regard. Here, the State has by no means authorized some religious sect or its functionaries to carry out a public function. Indeed, the Majority's expectation that A.A. volunteers working in the ASAT Program will "wholeheartedly" engage in proselytization and religious indoctrination (Majority opn, at 22) is gratuitous and finds no support in the record or in empirical data.

VI.

Many people may believe that A.A. is an entity of spiritual essence or experience. Referenced incorporation of its literature into ASAT to forge a religious alchemy that implicates the Establishment Clause of the First Amendment by some foreboding compulsion feature, however, is not justified or proven. Greater quantum and quality should be required to cross that

constitutionally blurred barrier. Indeed, the repeated evocation of a generalized deity figure and symbol or some nondenominational, secular alternative "Higher Power" fail to support this profound absorption of A.A. and ASAT into the territory of a compulsory, constitutionally-forbidden religious encounter. We reiterate, in summary, the cogent resolution of this case by the unanimous Appellate Division:

> [I]t is our conclusion that petitioner has failed to make an adequate record to state a claim for an Establishment Clause violation. The petition cites nothing of a religious nature about this particular ASAT program or its practices other than the fact that it is modeled after the principles of AA which make references to "God" and a "Higher Power". We hold that under the facts and limited record in this case, the inclusion of the 12-step AA component into the ASAT program did not make the program a religious exercise and, therefore, did not violate petitioner's rights under the Establishment Clause of the 1st Amendment (211 AD2d 187, 194 [Spain, J.]).

Nevertheless, this case is now concluded by this Court with a torrent of competing words and interpretations of the record, relevant authorities and constitutional analysis. In the end, Judge Ciparick and I agree with the lower courts and disagree with the reversal decree here because ASAT and A.A., in their essences and practices, have not been shown to compel or proselytize a State-imposed religious activity and participation generally or as to petitioner that violate the precepts of the Establishment Clause of the First Amendment of the United States Constitution.

* *

Order reversed, without costs, and judgment granted prohibiting respondents from conditioning petitioner's participation in the Family Reunion Program on petitioner's attendance in the subject Alcohol and Substance Abuse Treatment Program. Opinion by Judge Levine. Chief Judge Kaye and Judges Simons, Titone and Smith concur. Judge Bellacosa dissents and votes to affirm in an opinion in which Judge Ciparick concurs.

Decided June 11, 1996

Appendix C—Decision and Order of the Appellate Division, Third Department

Supreme Court—Appellate Division
Third Judicial Department

Decided and Entered: May 18, 1995 71102

In the Matter of DAVID GRIFFIN,
Appellant,

OPINION AND ORDER

v

THOMAS A. COUGHLIN III, as Commissioner of the New York State Department of Correctional Services, et al.,
Respondents.

Calendar Date: March 31, 1995

Before: Cardona, P.J., White, Casey, Peters and Spain, JJ.

Robert N. Isseks, Goshen, for appellant.

Dennis C. Vacco, Attorney-General (Julie S. Mereson of counsel), Albany, for respondents.

Spain, J.

Appeal from a judgment of the Supreme Court (Canfield, J.), entered March 30, 1994 in Ulster County, which dismissed

petitioner's application, in a proceeding pursuant to CPLR article 78, to review a determination of respondent Commissioner of Correctional Services denying petitioner's grievance.

Petitioner, a self-declared atheist, was participating in the Family Reunion Program (hereinafter FRP) while incarcerated at Greenhaven Correctional Facility in Dutchess County under the jurisdiction of the Department of Correctional Services (hereinafter DOCS). Upon his transfer to Shawangunk Correctional Facility in Ulster County in May 1991, he was informed that, because he had a history of drug abuse, he had to apply for entry to and participation in Shawangunk's Alcohol and Substance Abuse Treatment (hereinafter ASAT) program pursuant to DOCS directive No. 4500 as a precondition to his continued participation in the FRP. In the fall of 1992 petitioner was placed in Shawangunk's ASAT program.

In April 1993, petitioner filed a grievance objecting to the alleged religious principles espoused in the ASAT program and sought to be excused from the program. After a hearing the grievance was denied and his appeal to the Central Office Review Committee was also denied. Petitioner commenced this CPLR article 78 proceeding alleging that requiring him to participate in a treatment program which utilizes the 12-step modality of Alcoholics Anonymous (hereinafter AA) violates his rights under the Establishment Clause of the 1st Amendment to the Federal Constitution. Supreme Court dismissed the petition, ruling that the ASAT program did not violate petitioner's 1st Amendment rights. Petitioner appeals, and we now affirm.

Respondents assert that ASAT is an alcohol/drug rehabilitation treatment program which provides a combination of services including traditional counseling and requires, as an essential adjunct to treatment, participation in self-help groups such as Alcoholics Anonymous and Narcotics Anonymous (hereinafter NA). These self-help organizations advocate 12

principles, called the "Twelve Steps",[1] which are directed at helping those suffering from alcohol or drug addiction to maintain their sobriety.

Petitioner's grievance was based upon his assertion that he was being required to attend a "religious" program in order to be eligible for the enhanced visitation privileges provided in the FRP. Significantly, his petition is devoid of any details or specifics of what occurs at meetings or how the sessions are conducted with a religious orientation, and no affidavits or other documents were offered in support of his assertion.

Citing several AA publications, respondents assert that in the 12-step program the word "God" is used as a term of art to express a concept of "a higher power" outside the participant's ego and that this need for "a higher power" arises directly from

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[1]The "Twelve Steps" are as follows: 1. We admitted we were powerless over alcohol - that our lives had become unmanageable. 2. Came to believe that a Power greater than ourselves could restore us to sanity. 3. Made a decision to turn our will and our lives over to the care of God *as we understood Him*. 4. Made a searching and fearless moral inventory of ourselves. 5. Admitted to God, to ourselves, and to another human being the exact nature of our wrongs. 6. Were entirely ready to have God remove all these defects of character. 7. Humbly asked Him to remove our shortcomings. 8. Made a list of all persons we had harmed, and became willing to make amends to them all. 9. Made direct amends to such people wherever possible, except when to do so would injure them or others. 10. Continued to take personal inventory and when we were wrong promptly admitted it. 11. Sought through prayer and meditation to improve our conscious contact with God *as we understood Him*, praying only for knowledge of His will for us and the power to carry that out. 12. Having had a spiritual awakening as the result of these steps, we tried to carry this message to alcoholics, and to practice these principles in all our affairs (Alcoholics Anonymous World Services Inc.,Alcoholics Anonymous [3d ed 1976] at 59-60 [emphasis in original]).

an alcoholic's[2] realization of the lack of power he or she has over his or her own life. In *Twelve Steps and Twelve Traditions* (Alcoholics Anonymous World Services Inc. [13th ed 1983]), which AA describes as an interpretive commentary of the AA program, the program founders state: "Alcoholics Anonymous does not demand that you believe anything. All of its Twelve Steps are but suggestions" (*id.*, at 27). The AA preamble states as follows:

> ALCOHOLICS ANONYMOUS is a fellowship of men and women who share their experience, strength and hope with each other that they may solve their common problem and help others to recover from alcoholism.
>
> The only requirement for membership is a desire to stop drinking. There are no dues or fees for A.A. membership; we are self-supporting through our own contributions.
>
> A.A. is not allied with any sect, denomination, politics, organization or institution; does not wish to engage in any controversy; neither endorses nor opposes any causes.
>
> Our primary purpose is to stay sober and help other alcoholics to achieve sobriety (Alcoholics Anonymous World Services Inc., The A.A. Grapevine Inc. [1974]).

Respondents concede that the 12-step modality is spiritual in nature but assert that the AA program is not itself a religion nor

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[2] Because alcoholism is the primary target of AA, the term alcoholic is used for discussion purposes only; the 12-step modality used by AA is used in ASAT but applies to all types of substance abuse.

does it endorse religion. The basic text of the program is a book entitled *Alcoholics Anonymous* (Alcoholics Anonymous World Services Inc. [3d ed 1976]). The text sets forth the following description of the AA program:

> The terms "spiritual experience" and "spiritual awakening" are used many times in this book which, upon careful reading, shows that the personality change sufficient to bring about recovery from alcoholism has manifested itself among us in many different forms.
>
> * * *
>
> With few exceptions our members find that they have tapped an unsuspected inner resource which they presently identify with their own conception of a Power greater than themselves.
>
> Most of us think this awareness of a Power greater than ourselves is the essence of spiritual experience. Our more religious members call it "God-consciousness".
>
> * * *
>
> We find that no one need have difficulty with the spirituality of the program. *Willingness, honesty and open mindedness are the essentials of recovery* (*id.*, at 569-570 [emphasis in original]).

Respondents further contend that AA permits a participant to choose his or her own conception of "God" as emphasized in "Step Three", which contains the phrase "God *as we understood him*" (Alcoholics Anonymous World Services Inc., Alcoholics Anonymous [3d ed 1976], at 59 [emphasis in original]).

Petitioner, in support of his position, cites a statement made in the written response to his original grievance; the response, dated April 22, 1993, in denying the grievance states, in part, as follows: "At this time the facility does not offer a substance abuse program (therapeutic) without a religious background." Robert Cunningham, a senior correction counselor, avers in an affidavit that his characterization of the program was inappropriate and asserts that he made that statement without any familiarity with the ASAT program at Shawangunk. He concludes that, at the time the statement was made, he "did not have any independent, first hand knowledge that the ASAT program at Shawangunk Correctional Facility was conducted without a religious foundation".

In response to the petition, respondents also submitted an affidavit of Charles Clark, employed by DOCS as an ASAT Program Assistant at Shawangunk. Clark states that he is responsible for administering the ASAT program at Shawangunk. He further states as follows: "The program does not preach religion in any form. No inmate participating in the program is required to express a belief in God, or follow any religious principles." Clark's statement is not controverted. In further support of respondents' position is an affidavit of Lorraine Cohen, a senior correctional counselor for DOCS, who states that the AA 12-step methodology is utilized in the ASAT program by DOCS because it is so successful and that it serves upwards of 20,000 inmates in New York each year.

The thrust of petitioner's argument is that requiring him to attend a "religious" 12-step component of the ASAT program as a precondition to his FRP visits with his family violates his rights under the Establishment Clause. He argues in his brief and reply brief that a reading of *Twelve Steps and Twelve Traditions* (*supra*) and other AA literature makes it clear that the program has a religious content and that the "Twelve Steps" of AA encourage the participants to orient themselves with respect

to their addiction in theistic terms. Petitioner relies heavily on a 1993 decision of the Federal District Court for the Southern District of New York, *Warner v. Orange County Dept. of Probation* (827 F Supp 261) (hereinafter *Warner I*). In that case, the District Court denied the probation department's motion to dismiss a lawsuit by a motorist who was ordered, as a condition of probation, to attend AA meetings after being convicted of an alcohol-related driving offense and ruled that the motorist's allegations regarding the program he was compelled to attend adequately stated a claim for a violation of the Establishment Clause (*id.* at 266-268). In noting specific allegations made by the plaintiff about the particular program he was ordered to attend which he found offensive, the court suggested that its decision may be limited to the facts alleged in that case and to the "specific [AA] chapter" attended by the plaintiff and "not to AA as a national organization" (*id.*, at 267). After a bench trial, the District Court determined that the plaintiff's 1st Amendment rights had been violated (*Warner v. Orange County Dept. of Probation* (870 F Supp 69) (hereinafter *Warner II*).

Petitioner directs this court's attention to the many references to "God", "Higher Power" and "prayer and meditation" contained in AA literature. Critically, however, he cites nothing specific about the ASAT program he attends to support his position that a religion is being forced upon him by DOCS.

The Establishment Clause of the 1st Amendment to the Federal Constitution provides that "Congress shall make no law respecting an establishment of religion". The 1st Amendment is made applicable to the states through the 14th Amendment (*see, Edwards v. South Carolina*, 372 US 229, 235). It is well settled that atheism is protected by the 1st Amendment in that the Establishment Clause does not merely prohibit governmental favoritism among religions, but proscribes favoring religion over nonreligion as well (*see, Wallace v. Jaffree*, 472 US 38, 52-54; *Warner I, supra*, at 265).

Recent opinions from the Federal District Courts have addressed the issue of whether obligatory participation in a state-sponsored AA program violates the Establishment Clause and are instructive in our analysis (*see, Warner II, supra; Warner I, supra; see also, O'Connor v State of California*, 855 F Supp 303; *Jones v Smid*, US Dist Ct, SD Iowa, Apr. 29, 1993, Bremer, J.; *Stafford v Harrison*, 766 F Supp 1014). The District Court in *Warner II* found specific instances of coercive religious practices in concluding that the probation department "violated the Establishment Clause by coercing the plaintiff to participate in religious exercise, an act which tends towards the establishment of a state religious faith" (*Warner II, supra*, at 73).[3] There, the District Court made the following observations regarding that particular program:

> Group prayer was common at the A.A. meetings plaintiff attended. Many of the meetings began with a non-demoninational "Serenity Prayer" ("Lord, grant me the serenity to accept the things that I cannot change, the courage to change the things I can, and the wisdom to know the difference") and all of the meetings ended with the Lord's Prayer, which is a specifically Christian prayer. In addition, those attending the meetings were strongly encouraged to pray.

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[3] It should be noted that although the District Court, in both *Warner* decisions, failed to apply the three-prong test established by the United States Supreme Court in *Lemon v. Kurtzman* (403 US 602), the test is still considered by the New York Court of Appeals to be the governing precedent in the analysis of Establishment Clause violations (*see, Grumet v Board of Educ. of Kiryas Joel Vil. School Dist.*, 81 NY2d 518, 526-527, *affd* __ US _, 114 S Ct 2481; *New York State School Bds. Assn. v Sobol*, 79 NY2d 333, 339, *cert denied*__US __, 113 S Ct 305).

> In short, the A.A. program that plaintiff experienced placed a heavy emphasis on spirituality and prayer, in both conception and in practice (*Warner II, supra,* at 71).

The District Court in *Warner II* concluded that "the testimony and evidence * * * support [ed] the finding that the A.A. meetings plaintiff attended were the functional equivalent of religious exercise" (*Warner II, supra,* at 72).

In *O'Connor v State of California* (855 F Supp 303, *supra*), the District Court held that requiring the plaintiff to participate in a self-help group following a conviction for drunk driving did not violate the Establishment Clause. The court described specific aspects of the local program as follows:

> AA meetings that plaintiff attended were opened with a prayer and were closed with participants holding hands and reciting the Lord's Prayer. In addition, at one meeting plaintiff received a handout entitled "Twelve Steps and Their Biblical Comparisons," which compared each of the twelve steps to a passage from the New Testament (*id.*, at 306).

In applying the test set forth in *Lemon v Kurtzman* (403 US 602), the District Court in *O'Connor* observed that "the fact that the concept of God is incorporated in a program in which the State encourages participation does not in itself violate the Establishment Clause" (*O'Connor v State of California, supra,* at 308). Although expressing reservations about the program attended by the plaintiff, the District Court upheld the policy of requiring participation in a self-help program, where AA was the primary program offered, because the plaintiff was offered other options including, as an alternative, a nonspiritual oriented recovery program (*id.*, at 308).

In *Jones v Smid* (*supra*), the District Court was faced with a 1st Amendment challenge to a prison-based alcohol rehabilitation program patterned after the 12-step concept of AA. There the District Court found that the plaintiff, an atheist, did not meet his burden of establishing that the particular program he attended coerced him to express a belief in God and further found that he was given the option of substituting "words such as 'a power other than myself' or 'a power outside myself'" in place of the word "God" (*id.*, at slip opn p 2). In concluding that the program which the plaintiff challenged "is spiritual in nature but not religious" (*id.*, at slip opn p. 6), the District Court ruled that "[i]n this case, there is a strong and legitimate penological interest in assuring that inmates are rehabilitated by receiving appropriate treatment for substance abuse before their release" (*id.*, at slip opn p 5; *see, Stafford v Harrison,* 766 F Supp 1014, 1017, *supra*; *see also, O'Lone v Estate of Shabazz*, 482 US 342, 353; *Turner v Safley*, 482 US 78, 89; *see generally, Pell v Procunier*, 417 US 817, 822-823).

In *Stafford v. Harrison* (*supra*), as in the instant case, the record failed to document specifics as to what occurred at the meetings or sessions which the inmate was required to attend as part of an AA-oriented substance abuse program. In its analysis of the precepts of AA, the District Court found that the "program may [not] properly be characterized as a religion" (*id.*, at 1016). In further finding that the "spiritual element" of the program at issue was "flexible" and that plaintiff "ha[d] not shown [that] the program caused him to abandon or contravene any tenet of his faith", the District Court concluded that "the court cannot find that participation in the * * * program seriously burdened plaintiff's religious beliefs" (*id.*, at 1018).

With the foregoing as guidance, it is our conclusion that petitioner has failed to make an adequate record to state a claim for an Establishment Clause violation. The petition cites nothing of a religious nature about this particular ASAT

program or its practices other than the fact that it is modeled after the principles of AA which make references to "God" and a "Higher Power". We hold that under the facts and limited record in this case, the inclusion of the 12-step AA component into the ASAT program did not make the program a religious exercise and, therefore, did not violate petitioner's rights under the Establishment Clause of the 1st Amendment.

Cardona, P.J., White, Casey and Peters, JJ., concur.

ORDERED that the judgment is affirmed, without costs.

ENTER:

/s/Michael J. Novack
Michael J. Novack
Clerk of the Court

Appendix D—Opinion of the Supreme Court

STATE OF NEW YORK
SUPREME COURT COUNTY OF ULSTER

IN THE MATTER OF THE APPLICATION OF

DAVID GRIFFIN, 68-A-0237

Petitioner,

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

DECISION
AND
JUDGMENT

-against-

THOMAS A. COUGHLIN, III, Commissioner,
N.Y.S. Dept. of Correctional Services;
LOUIS F. MANN, Superintendent,
Shawangunk Correctional Facility,

Respondents.

Supreme Court, Ulster County, Motion Term
Index No. 93-2066
RJI No. 55-93-00981

(Justice James B. Canfield, Presiding)

APPEARANCES: David O. Griffin, Jr., #68-A-0237
Petitioner, Pro Se.

Hon. Robert Abrams
Attorney General of the State of New York
Attorney for Respondents
Amy Schallop, Esq., of Counsel.

Canfield, J.:

Petitioner commences this proceeding, pursuant to Article 78 of the CPLR, seeking a Judgment vacating and setting aside respondents' April 28, 1993 determination denying his Inmate Grievance, said determination being affirmed by Decision dated May 26, 1993, and compelling respondent New York State Department of Correctional Services to discontinue its practice of forcing him to attend a "religious" program as a condition to his continued participation in the Family Reunion Program. Petitioner bases this challenge on the grounds that his forced participation in the Alcohol and Substance Abuse Treatment program, which is commonly referred to as "ASAT", is mislabeled a "treatment" program and violates his First Amendment right of freedom of religion, as he claims to be an agnostic/atheist. Petitioner also seeks Leave of the Court to prosecute this matter as a Poor Person under CPLR Section 1101.

Respondents oppose the relief sought by petitioner herein and argue that the ASAT program is neither a "religious" program nor does it promote or inhibit any specific religion or religious principles. Respondents further argue that the ASAT program clearly has a secular purpose and that it neither violates the Establishment Clause nor petitioner's right to freedom of religion under the First Amendment. Respondents thus conclude that the Court should deny the relief sought by petitioner and dismiss the instant Petition.

Upon a careful examination of the parties' respective arguments and utilizing an analysis similar to that employed by the New York Court of Appeals in *New York State School Boards Association v. Sobol,* 79 NY 2d 333, cert den., __ U.S. __, this Court is constrained to agree with respondents' well-reasoned and rational explanation of the purpose and implementation of the ASAT program. Further, petitioner's blanket allegations in support of the instant Petition fail to persuade the Court that he is entitled to the relief sought herein. Finally, the Petition for

Poor Person relief fails to satisfy the requirements of Section 1101 (a).

Therefore, on the basis of the foregoing analysis, the Court denies both Petitions and dismisses this proceeding in its entirety. No Motion costs are awarded herein.

This Memorandum constitutes the Decision and Order of this Court. All papers including this Decision and Order are returned to the Attorney General. The signing of this Decision and Order shall not constitute entry or filing under CPLR Rule 2220. Counsel are not relieved from the applicable provisions of that Rule respecting filing, entry and Notice of Entry.

SO ORDERED!

ENTER

Dated: Troy, New York
March 18, 1994

s/James B. Canfield
JAMES B. CANFIELD
J.S.C.

Papers Considered:

(1) Order to Show Cause of Hon. Vincent G. Bradley, J.S.C., dated July 7, 1993.
(2) Notice of Petition, dated June 23, 1993.
(3) Petition of David O. Griffin, Jr., verified June 23, 1993, with exhibits annexed.
(4) Petition of David O. Griffin, Jr., to Sue as a Poor Person, verified June 23, 1993.
(5) Respondents' Answer, verified August 27, 1993 by Amy Schallop, Esq., with exhibits annexed.
(6) Affidavit of Robert Cunningham, sworn to August 3, 1993, in support of Answer, with exhibits annexed.

(7) Affidavit of Lorraine Cohen, sworn to August 27, 1993, in support of Answer.

(8) Affidavit of Charles Clark, sworn to August 27, 1993, in support of Answer.

(9) Reply Affidavit of David O. Griffin, Jr., sworn to August 31, 1993.

(10) Respondents' Memorandum of Law, dated September 8, 1993.

(11) Letter from Amy Schallop, Esq., dated November 17, 1993.

(12) Letter from David Griffin, dated November 19, 1993.

APPENDIX E—Petitioner's Reply Affidavit in the Supreme Court

STATE OF NEW YORK
SUPREME COURT—COUNTY OF ULSTER

In the Matter of the Application of
DAVID GRIFFIN, 68A0237
Petitioner,

REPLY AFFIDAVIT TO RESPONDENT'S ANSWER DATED AUG. 27, 1993

For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules

RJI #55-93-00981
Justice Canfield

-against-

THOMAS A. COUGHLIN III, Commissioner, N.Y.S. Dept. of Correctional Services; LOUIS F. MANN, Superintendent, Shawangunk Correctional Facility,
Respondents.

State of New York)
County of Ulster) s.s.:

David Griffin, being duly sworn, deposes and says:

1. That he is the petitioner in the above captioned matter, and makes this affidavit in reply to respondent's Answer, dated August 27, 1993, and received by petitioner August 30, 1993.

2. That he requests a hearing to substantiate his claims and clarify certain factual disputes and omissions raised in respondent's Answer.

3. That on or about September 19, 1968, in the County Court, County of Suffolk, petitioner was found guilty after trial, Ind. No.-264/68. During the taking of petitioner's pedigree, at page 285, the Clerk of the Court asks petitioner . . . "What is your religious faith, if any?" The response to that question is . . . "I don't - none." On or about August 28, 1979, in the County Court, County of Cayuga, petitioner was found guilty after trial. Ind. 2810. During the taking petitioner's pedigree, at page 569, the Clerk of the Court asks petitioner . . . "What is your religious instruction?" The response to that question is . . . "None."

4. Respondent's Answer, at paragraph 3, claims that there is not "sufficient knowledge or information" to respond to petitioner's claim that he is an agnostic/atheist. Pre-Sentence Reports were prepared in 1968 and 1979, after the aforementioned jury verdicts, and the information supplied in the aforementioned trial transcripts would be contained in those Reports. These Reports are a part of petitioner's records at this facility but are not available to petitioner. The information could have been supplied to the Attorney General's Office if there had been an inquiry, and they can be made available for the Court's perusal at the hearing.

5. The affidavit supplied by Charles Clark appears to be incomplete to the extent that it does not mention the "readings" he uses to begin each Pre-ASAT session that I must attend and the fact that he relies upon the "12 Step" modality; nor does it mention the fact that he informed the class, *last month,* that we will be compelled to enroll in Narcotics Anonymous or Alcoholics Anonymous as soon as the facility declares that ASAT is no longer a paid module.

6. Based upon information and belief the affidavit supplied by Robert Cunningham, Senior Correction Counselor, shows that he is not aware of the new policy that is scheduled to take place concerning the relationship between ASAT, NA, and AA at this facility. Moreover, that affidavit implies that petitioner supplied

the exhibits he reviewed when he wrote his "recommendation" after the hearing held in the IGRC Office on or about April 22, 1993. The facts are that these exhibits were supplied as *part of the investigation that takes place during the processing of Grievances under Directive #4040.*

7. That a recent edition of the New York Law Journal printed an excerpt from a decision by Judge Gerald L. Goettel, in *Warner v. Orange County Department of Probation,* 93-1544, handed down in the U.S. District Court for the Southern District of New York's Westchester branch, which states in part:

> "The policy of requiring probationers with drinking problems to attend AA does serve a secular purpose of preventing drunk driving. However, to the extent that AA is the selected organization, since it allegedly relies upon religious indoctrination to enforce its principles, it arguably has a primary effect of advancing religion. Since the state court has directed plaintiff's participation, it could be viewed as excessive entanglement with religion."

8. Respondent's Answer refers to the possibility of a memorandum of law arriving, however, no memorandum of law has been received by petitioner.

WHEREFORE, petitioner prays for an Order pursuant to Article 78 of the Civil Practice Law and Rules, and in the interests of justice:

a. granting the relief sought in his verified petition, dated June 23, 1993; or

b. granting a hearing and/or such other and further relief as to this Court may seem just and proper.

s/David O. Griffin Jr.
David Griffin 68A0237

Sworn to before me this
31 day of Aug., 1993
(Illegible)
NOTARY PUBLIC

cc: Louis Mann, Superintendent

Thomas A. Coughlin, III, Commissioner
N.Y.S. Dept. of Correctional Services
State Campus, Building #2
Albany, New York 12226

Amy Schallop, Esq.
Assistant Attorney General
The Capitol
Albany, New York 12224

APPENDIX F—Peters, "Substance Abuse Services in Jails and Prisons"

LAW AND PSYCHOLOGY REVIEW

VOLUME 17 **SPRING 1993**

CONTRIBUTED ARTICLES

Captives' Legal Right to Mental Health Care — *Fred Cohen*

Riggins v. Nevada: Towards a Unified Standard for a Prisoner's Right to Refuse Medication? — *Henry A. Dlugacz*

Substance Abuse Services in Jails and Prisons — *Roger H. Peters*

The Conundrum of Federal Jail Suicide Case Law Under Section 1983 and Its Double Bind For Jail Administrators — *George J. Franks*

STUDENT ARTICLES

Applying the Brakes to Prison Reform Litigation—*Wilson v. Seiter* and *Rufo v. Inmates of Suffolk County* — *Gary A. Cook*

Regulatory Pressures Hamper the Effectiveness of Electroconvulsive Therapy — *Stuart Y. Johnson*

Anti-Stalking Laws: Will They Curb the Erotomanic's Obsessive Pursuit? — *Susan Cullen Anderson*

The Insanity Plea: A Futile Defense For Serial Killers — *Anne C. Gresham*

Applying the Reasonable Woman Standard in Evaluating Sexual Harassment Claims: Is It Justified? — *Melanie A. Meads*

The Aftermath of *Casey*: Is a Sonogram Requirement Unduly Burdensome? *Charles F. Trense Jr.*
Parent-Child Relationships: The Impetus Behind the Gregory K. Decision *Jamie D. Manasco*
R.A.V. v. St. Paul: Case Note *William H. Huffman III*
Premises Liability: Recent Trends in Alabama Law Regarding a Premises Owner's Liability to an Invitee for the Criminal Acts of a Third Person *Don Gregory Dunagan*

[p. 85] (Substance Abuse Services in Jails and Prisons

Roger H. Peters.[*]

I. Introduction

Unprecedented numbers of drug law violators have been arrested and incarcerated during the past seven years. This trend has been accelerated by the ready availability of inexpensive

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[*]Roger H. Peters, Ph.D. is an Assistant Professor in the Department of Law and Mental Health at the Florida Mental Health Institute (FMHI), University of South Florida in Tampa. He has been a faculty member at the University since 1986, after receiving his doctorate in clinical psychology from the Florida State University and completing a predoctoral internship at the University of North Carolina School of Medicine, Department of Psychiatry. Dr. Peters has worked for the past several years to design and evaluate the Hillsborough County Sheriff's Office Substance Abuse Treatment Program, one of three in-jail model demonstration projects funded by the Bureau of Justice Assistance. He has also helped to evaluate results of a nationwide survey of in-jail substance abuse treatment services, also sponsored by the Bureau of Justice Assistance. He has served as a consultant for the Office for Treatment Improvement Center for Substance Abuse Treatment and the American Jail Association in developing substance abuse treatment programs and evaluation initiatives within criminal justice settings.

cocaine in urban areas, enhanced law enforcement efforts to curtail neighborhood drug sales, and by "zero tolerance" policies that impose minimum mandatory sentences for a variety of drug offenses.[1] Among federal prisoners, the proportion of drug-involved inmates committed for drug charges rose from 34% to 58% between 1986 and 1991.[2] Recent surveys show that over 70% of jail inmates and approximately 80% of prison inmates have used drugs at some point in their lives.[3]

Involvement with substance abuse has been found to accelerate the level of criminal activity.[4] Results from the recent Epide-

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[p 104] average length of four to six months, with flexibility for inmates to remain in the program for more than a year. [123]

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[1]*See generally* The Drug Legalization Debate (James A. Inciardi ed. 1991); *see* also U.S. Dep't of Justice, *Police Crackdowns,* 219 Nat'l Inst. of Just. Rep. 2 (1990); U.S. Dep't of Justice, *Federal Sentencing in Transition,* 1986-90, Bureau Just. Stat. Special Report (1992).

[2]U.S. Dep't of Justice, *Drugs and Crime Facts, 1991,* Bureau Just. Stat. 14 (1992).

[3]*Id.* at 6.

[4]Bruce D. Johnson et al., *Drug Abuse in the Inner City: Impact on Hard-Drug Users and the Community,* in Drugs & Crime 41 (Michael Tonry & James Q. Wilson eds., 1990); M. Douglas Anglin & George Speckart, *Narcotics Use and Crime: A Multisample, Multimethod Approach,* 26 Crim. 197 (1988).

psychoeducational module, followed by a more intensive TC program. A local TASC program provides court liaison and case management services for inmate participants. The Pima County Sheriff's Office in Tucson, Arizona, provides treatment for approximately 50 sentenced inmates. Primary treatment activities in this long-term program include encounter groups,

(continued...)

Specialized orientation activities are provided for inmates that include use of peer counselors and mentors.[124] A broad spectrum of services are offered to supplement core group and individual counseling activities, including AIDS prevention classes, educational and vocational training, and mental health treatment.[125]

Several jail programs employ "chemical dependency" approaches that view addiction as a progressive disease that responds most favorably to a medical treatment regimen. Major interventions include twelve-step groups, didactic sessions, individual and group counseling, and emphasis on ongoing contact with community support groups.[126] Other less traditional substance abuse treatment approaches within jails include use of methadone maintenance for opiate addicts. The central jail facility at Rikers Island, New York, provides treatment for approximately 3000 sentenced inmates per year, with referral to community methadone clinics following release from jail.[127]Acupuncture has recently been implemented at jail facilities in New York and Miami. This approach is reported to

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(...continued)
seminars, work assignments, and educational programs. The program utilizes a well-developed network of community treatment resources to place inmates in followup care. Treatment services are provided by Amity, Inc. *Id.*

[123] *Id.*

[124] *Id.*

[125] *Id.*

[126] *Id.*

[127] *Id.*

reduce drug cravings during the early stages of treatment, and is coupled with substance abuse education and counseling.[128]

Specialized jail treatment approaches are needed for several high risk inmate populations, including mentally ill substance abusers, female addicts, and inmates with a lengthy history of contact with the criminal justice system.[129] These groups appear to be

* * *

[p. 107] mated that 11 % of prison inmates were involved in substance abuse programs between 1979 and 1987.[145] Despite this trend towards expanding treatment capacity for prisoners, the vast majority of drug-involved inmates remain untreated.[146] Even among prison systems with expanded treatment capacity, difficulties have been experienced in screening and referring eligible inmates for treatment.[147] Many state prison systems do not currently include a coordinated system of substance abuse screening, assessment, and treatment.[148]

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[128]*See* Office of Rehabilitative Servs. Metro-Dade Dep't of Human Resources, Diversion & Treatment Program: An Overview (1989).

[129]Peters, *supra* note 88.

[145]Chaiken, *supra* note 8, at 5. *See generally* Marcia R. Chaiken & Bruce D. Johnson, U.S. Dep't of Justice, Characteristics of Different Types of Drug-Involved Offenders (1988).

[146]*See* U.S. Gen. Accounting Office, *supra* note 7, at 6.

[147]U.S. Gen. Accounting Office, Drug Treatment: Despite New Strategy, Few Federal Inmates Receive Treatment 5 (1991).

[148]U.S. Gen. Accounting Office, *supra* note 7, at 7. *See also* Nat'l Criminal Justice Ass'n, *State's Policies and Practices in Developing and Providing*

(continued...)

Results of several national surveys examining the scope of in-prison treatment programs indicate wide disparities in the level of services available in state prisons.[149] Forty-four states indicated that twelve-step programs and drug education services were available in prisons.[150] However, only thirty states reported an intensive residential drug treatment program.[151] Many states report a lack of resources to accommodate the large inmate population that needs substance abuse treatment.[152] Difficulties in obtaining ongoing funding for programs is sometimes augmented by the lack of support from policymakers, who may allocate only a small proportion of block grant monies to correctional treatment.[153] Given the scarcity of resources to meet the overwhelming demand for treatment, several state prison systems have attempted to prioritize intensive services for inmates who are nearing the completion of their sentence.[154]

Several model correctional programs have emerged in the past twenty years that provide innovative approaches to intervening [p. 108] with the substance-abusing offender.[155] These include initiatives developed in smaller states, which tend to provide more

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[148](...continued)
Treatment for Drug-Dependent Offenders, Bureau of Justice Assistance 2 (1990).

[149]Frohling, *supra* note 134, at 2.

[150]*Id.*

[151]*Id.*

[152]*Id.*

[153]*See* U.S. Gen. Accounting Office, *supra* note 7, at 8.

[154]*Id.* at 7.

[155]Peters, *supra* note 88.

specialized drug treatment services for 'high risk' offenders, and broader initiatives in larger states that are often designed for offenders with moderate to severe substance abuse histories.[156] Of the smaller state prison systems, the Oregon Department of Corrections operates several innovative programs, including the Cornerstone program, a thirty-two-bed therapeutic community developed in 1975.[157] Most inmates admitted to the Cornerstone program have long histories of substance abuse and criminal behavior.[158] The average length of treatment is from five to nine months, and includes four phases: (1) a thirty-day orientation, consisting of assertiveness training, cognitive skills, values clarification, and twelve-step groups, (2) intensive treatment, lasting four to eight months, (3) a transition phase, including community service work, development of a community support system, and preparation for independent living, and (4) aftercare, including involvement in ongoing treatment in the community.[159]

A unique aspect of the Cornerstone program is the focus on treatment of criminal thinking errors.[160] Criminal thought patterns and values are usually developed in advance of involvement with drugs.[161] Treatment interventions are designed to reorient the inmate's criminal value system through extensive

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[156]*Id.*

[157]Gary Field, Oregon Prison Drug Treatment Programs, 118 Nat'l Inst. Drug Abuse 142 (Carl G. Leukefeld & Frank Tims eds., 1992).

[158]*Id.* at 145.

[159]*Id.* at 146.

[160]*Id.* at 146-47.

[161]*Id.*

self-monitoring and restructuring of distorted thoughts.[162] Regular feedback is provided by staff and program participants to alert inmates to recurrent patterns of criminal thinking and behavior.[163] Another innovative approach established by the Oregon Department of Corrections is the Parole Transition Release Project, initiated in 1989.[164]The project is staffed jointly by a case manager and an

* * *

[p. 110] problems are placed in one of several residential programs, including an eight week alcohol treatment program, a nine to twelve month residential TC program which includes a focus on treatment of criminal thinking patterns, and a program for youthful offenders, which employs a range of cognitive-behavioral approaches.[174] Substance-abusing inmates who are assessed as having a criminal lifestyle and antisocial characteristics are referred to a specialized intensive TC program.[175]

More expansive correctional substance abuse initiatives have been developed in recent years within the states of Florida, New York, and Texas, and within the Federal Bureau of Prisons. The Florida Department of Corrections (DOC) has supported residential drug treatment programs since the early 1970s, and provides an integrated network of "Tier Programs" that provide

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[162] *Id.*

[163] *Id.*

[164] Gary Field & Michael Karecki, *Outcome Study of the Parole Transition Release Project* (1992) (report prepared in conjunction with the Oregon Department of Corrections).

[174] *Id.* at 128.

[175] *Id.* at 135.

a continuum of services for inmates with varying levels of treatment needs.[176] All inmates are screened for substance abuse problems at Reception Centers, and placed in treatment according to the severity of problems and the availability of treatment slots.[177] The most intensive treatment services within the Florida DOC system are provided in the Tier II and Tier III programs. Tier II programs include an eight-week modified TC program focusing on life management skills, relapse prevention, and reentry planning.[178] Tier III programs provide six to twelve months of TC treatment services.[179] Program services are delivered either through a mix of DOC staff and contracted providers from the community.[180]

A forty-hour drug education program is provided in Tier I programs.[181] This often serves as the orientation to treatment for inmates in need of more intensive services.[182] Tier IV programs are provided in Community Correctional Centers, and include ten weeks of relapse prevention, individual and group counseling, in-[p. 111] volvement in twelve-step groups, and preparation

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[176]*See* Fla. Dep't of Corrections. Substance Abuse Programs Comprehensive Report 2, 5 (1992). *See also* Wilson C. Bell et al., *Florida Department of Corrections' Substance Abuse Programs*, in 118 Nat'l Inst. Drug Abuse 110 (Carl G. Leukefeld & Frank M. Tims eds., 1992).

[177]Bell et al., *supra* note 176, at 112.

[178]*Id.* at 113-14.

[179]*Id.* at 114.

[180]*Id.* at 113-15.

[181]*Id.* at 113.

[182]*Id.*

for community reentry.[183] Two new innovative additions to the Florida DOC continuum of in-custody programs include Drug Treatment Centers and Day/Night Treatment.[184] A regional system of Drug Treatment Centers has been implemented in specialized treatment prisons.[185] Medium custody inmates receive expedited processing at Reception Centers, and subsequently participate in four to five months of TC treatment prior to release.[186] Day/night services offer a minimum of sixteen hours of intensive outpatient treatment per week.[187] Treatment is offered throughout the day and on weekends to insure that inmates are able to participate in work activities.[188]

All inmates committed to the New York Department of Correctional Services are screened for substance abuse problems at Reception Centers.[189] Inmates determined to be eligible for involvement in substance abuse services are sent to a "hub" institution that includes a cluster of facilities with several types of treatment programs of differing levels of intensity.[190] Substance abuse treatment services offered in New York prisons

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[183] *Id.* at 115.

[184] *Id.* at 114.

[185] *Id.*

[186] *Id.*

[187] *Id.* at 115.

[188] *Id.*

[189] Personal communication with William Mango, Director of Substance Abuse Services, Department of Correctional Services, State of New York (Oct. 20, 1992).

[190] *Id.*

include six long-term TC ("CASET") programs, each with a capacity of 200 inmates.[191]

An extensive correctional substance abuse initiative is currently under development in Texas. Legislation passed in 1991 helped establish a comprehensive array of treatment services for drug-involved offenders. The new system will include 12,000 new secure treatment slots in Substance Abuse Felony Punishment (SAFP) programs for offenders who otherwise would be eligible for state prison.[192] The SAFPs will be specialized facilities designed for medium-custody grade offenders who are convicted of nonvio

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[191] *Id.*

[192] *See* Tex. Comm'n on Alcohol and Drug Abuse, Criminal Justice Issues Update (Aug. 14, 1992).

APPENDIX G—Affidavit of Lorraine Cohen

STATE OF NEW YORK
SUPREME COURT COUNTY OF ULSTER

IN THE MATTER OF THE APPLICATION OF
DAVID GRIFFIN, 68A0237,
Petitioner,

For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules

AFFIDAVIT
RJI #55-93-00981

-against-

Index No. #93-2066

THOMAS A. COUGHLIN III, Commissioner,
N.Y.S. Dept. of Correctional Services;
LOUIS F. MANN, Superintendent,
Shawangunk Correctional Facility,

Respondents.

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

Lorraine Cohen, being duly sworn, deposes and says:

1. I am a Senior Correction Counselor (ASAT) for the New York State Department of Correctional Services (DOCS) and have been employed by the Department at all times relevant to this litigation. This affidavit in support of respondents' answer.

2. The Alcohol and Substance Abuse Treatment (ASAT) program provides treatment services to the chemically dependent inmate. Although ASAT is the Department's primary

program providing these services, the participation and support of Guidance staff, other facility programs, volunteer organizations such as Alcoholics Anonymous (AA), Narcotics Anonymous (NA), Cocaine Anonymous (CA), etc. are essential to fulfillment of program goals.

3. Presently, the ASAT program provides treatment services in 62 correctional facilities. As of June 30, 1993, 11,480 inmates were in treatment. In 1992, ASAT served approximately 20,000 inmates.

4. Historically, Division of Substance Abuse Services (DSAS), Division of Alcoholism and Alcohol Abuse (DAAA) and the Fellowship Center provided substance abuse or alcoholism treatment services in a few facilities, through federal grants. When these grants expired, the Department took over this function. Treatment principles espoused by these agencies were integrated to formulate the thrust of the ASAT treatment program. This combination of services included group counseling, individual counseling, other informational services such as seminars and community meetings with an emphasis on participating in self-help groups such as AA and NA. In addition, chemical dependency treatment in the private sector was growing in a similar direction, emphasizing community treatment and the use of self-help programs. This form of treatment remains state-of-the-art throughout the country.

5. Specifically, emphasis was placed on the use of self-help groups because of the importance of continued recovery after release from prison. There is clear consensus among public and private treatment providers that initial treatment must continue to maintain and reinforce recovery principles which are often thwarted by societal stressors especially when one is being released from prison. In addition, self-help groups are cost-free and extremely accessible even in remote areas of the state where no other treatment services are available, making it more likely that inmates will participate, thereby enhancing the chances for

ongoing successful recovery. In this regard, AA and NA participation is included in the program schedule to assist participants in becoming comfortable with attendance in self-help meetings, thereby increasing the likelihood that they will attend meetings upon release.

6. The ASAT is a treatment program utilizing traditional counseling techniques. It is based on the American Medical Association determination that addiction is a disease (1954) which is chronic, progressive and incurable. This position not only requires counseling, but due to the nature of the chronicity requires ongoing attention and support on addiction issues, otherwise relapse is the probable consequence.

7. Self-help groups such as AA and NA operate from the disease concept and, therefore, are a natural next step to the treatment process. Self-help groups such as AA and NA, as fellowships of individuals who are in recovery, simply use the twelve steps to maintain sobriety and garner support. It is not a treatment program.

8. The ASAT manual specifies that AA and ASAT are separate. It looks upon AA and NA in much the same way that the Office of Alcohol and Substance Abuse Services (OASAS) does (OASAS is the primary agency addressing issues of addiction for the State of New York). It is considered an adjunct to therapy. In fact, the ASAT manual clearly indicates that ASAT treatment staff should not be involved in running AA or NA meetings. These are chaired by AA and NA volunteers from the community.

9. We cannot speak for self-help groups such as AA and NA, but they have clearly indicated that they are not religious programs or affiliated with any religious organizations. While they reference the term "God" in the twelve steps, they go to great lengths to explain that this concept refers to a Higher Power as the individual may understand such Higher Power. There is much literature which indicates that this fellowship is

not religious but is, in fact, spiritual leaning on the concept that in order to remain sober, one must relinquish his or her will (ego) to something or someone (Higher Power) in order to learn a new way of living and coping with life stressors. Often this Higher Power has been identified as the AA or NA group itself. It goes to great lengths to explain the term "God" so as not to confuse it with the concepts of organized religion. Both the AA and NA twelve steps and traditions (the basis of both programs) include non-affiliation as a core principle.

10. The only references made to God in the ASAT program are those necessary to explain the Higher Power concept as described in the AA and NA twelve steps. This will enable the client to integrate the twelve steps so that he/she becomes comfortable with self-help groups. It does not make specific references to God as an institutional religion would wherein the individual is required to worship, praise, give thanks, or petition to a Creator.

11. Inmates are required to participate in treatment services which focus on addition and recovery, over a six-month period involving 330 hours. These services include group and individual therapy, audio/video presentations and discussions, lectures and seminars, self-help groups such as AA and NA, community meetings, pre-release planning and recovery-related issues such as sexuality, AIDS, violence, etc.

12. The Department's Research Unit has done studies over the years which have indicated that inmates who have successfully participated in the program return at a lower rate than inmates in the general population. Other studies have indicated that inmates' behavior and academic and vocational achievements have vastly improved after participating in ASAT. A study also was conducted administering both a pre- and post-Tennessee

Self-Concept Scale.[1] This study indicated that there was a significant improvement in self-concept after participation in ASAT.

13. First, the ASAT program does not specifically make references to God in a religious sense. If one were to eliminate the use of the twelve steps and the support groups which references a Higher Power such as AA and NA, not only would DOCS be affected but other public and private agencies and substance abuse treatment programs would be negatively impacted. The use of such groups is considered state-of-the-art and used by most treatment providers. We would be left without a comprehensive support network which is so necessary to maintain recovery. In addition, addicted clients would be impacted in the loss of the numerous and accessible support groups.

14. The addicted individual cannot be viewed in isolation from other individuals who support and are involved with him/her. Addiction affects these significant others.

15. Therefore, if treatment is to be complete and effective, family members must also rely on treatment and support to maintain a healthier relationship with the addict. In this regard, other support groups which use the twelve steps are often recommended as an adjunct to family treatment. These other support groups, such as Alanon, Naranon and Alateen, etc. also use the same twelve steps which make reference to "God as we understood him." Therefore, to eliminate the support network for the inmate could jeopardize the conjoint use of this comprehensive support network for all family members. Countless numbers of individuals could lose a valid and effective support system.

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[1]The Tennessee Self-Concept Scale is an inventory measuring an individual's positive or negative self-concept.

16. There are other recognized approaches to addiction treatment which do not use the twelve-step approach. However, AA and NA are the only support networks accessible to large numbers of people in every geographical area. In addition, many of these other approaches do not have comprehensive strong family treatment components. Given that DOCS treats approximately 20,000 inmates per year, no other form of treatment seems practical.

17. From the perspective of DOCS as a treatment provider, the petitioner displays the primary symptom of the disease of addiction. This symptom is commonly called denial whereby an individual uses defenses (often unconscious) including manipulation to avoid accepting the reality of his or her own addiction and the natural consequences. The breaking of this denial is the focus of effective treatment.

18. To modify a program for the sole purpose of catering to the denial of one resistant inmate could jeopardize the lives of not only addicted clients but the significant others who are involved and impacted by the addicted client. After all, the resistance displayed by petitioner is a typical symptom of addiction, requiring treatment. Acceding to program changes demanded by an inmate in denial would surely support his

continued addiction, rather than intervene in the addiction process. We must be careful to prevent inmates from believing they can change the system in order to avoid changing themselves.

s/Lorraine Cohen
LORRAINE COHEN

Sworn to before me this
27th day of August 1993.

s\W. Merrill Sanderson
NOTARY PUBLIC
W. MERRILL SANDERSON
Notary Public, State of New York
No. 4509254
Qualified in Albany County
Commission Expires May 31, 1995

APPENDIX H—Robertson, "The Changing World of the AA"

[p. 40]

The Changing World of ALCOHOLICS ANONYMOUS

Adapted from "Getting Better: Inside Alcoholics Anonymous," by Nan Robertson, to be published by William Morrow in April.

By Nan Robertson

Only Bill Wilson could have imagined A.A. as it is today, because only Bill, among the old-timers of Alcoholics Anonymous, had such grandiose, improbable dreams. In the summer of 1935, there were only two A.A. members—Wilson, a failed Wall Street stockbroker, and Dr. Bob Smith, a practicing surgeon—sitting in the Smith kitchen in Akron, Ohio, through half the night, chain smoking and gulping coffee and trying to figure out how they could sober up other drunks like themselves. The society they had founded would attract only 100 members over the next four years; it would not even have a name until 1939. Now there are more than a million and a half of us around the world—members of the most successful, imitated, yet often misunderstood self-help movement of the 20th century.

About half of all A.A.'s are in the United States, the rest are scattered among 114 other countries. Many additional millions have passed through the movement and have been made whole by its program, but A.A. periodically counts only those who are regularly attending meetings.

For those in the know, there are clues to A.A.'s presence everywhere: the sign on a jeep's hood in a Mexican town that says the "Grupo Bill Wilson" will meet that night; a West Virginia bumper sticker advising "Keep It Simple." The Serenity Prayer, attributed to the theologian Reinhold Niebuhr and

recited at the end of A.A. meetings, appears framed on the wall in a South African living room or embroidered on a pillow in a chic Madison Avenue shop.

AA's meet in Pagopago, American Samoa, on Wednesday nights, in McMurdo Sound, Antarctica, on Saturdays, and in Lilongwe, Malawi, on Mondays and Fridays. They find one another just to sit and chat between meetings in a doughnut and coffee shop on the main street of Peterborough, N.H., a town of 5,200 that has four A.A. groups. One of them is called Our Town in honor of Thornton Wilder, who took Peterborough as the model for his nostalgic play about American small-town life. The belfry of a Roman Catholic church near Covent Garden in London and a bank's board room in Marin County, Calif., are reserved for A.A. meetings once each week. Some groups meet on ships, at sea or in port. To these exotic settings must be added the thousands of prosaic basements and halls in churches, community centers and hospitals where most A.A's inch their way back to a life of quality.

In the last decade or so, large numbers of Amer-[p. 42]icans, mainly entertainers, have gone public to say they are recovered alcoholics. Almost all said their motivation, and their hope, was, by their example, to inspire still-drinking alcoholics to recovery. But the great mass of the membership everywhere is composed of more or less ordinary people. They are neither movie stars nor skid row bums; the great drama of their lives has not been played out in the spotlight or in squalid flophouses. These alcoholics have suffered, increasingly isolated, in bars, in their own bedrooms, or in the living rooms of friends who have become estranged by their drunken behavior. Their recovery has been worked out in private.

Over the last 50 years, the substance of A.A.—its core literature, its program of recovery and its ways of looking at life—has changed very little. But in terms of the numbers and diversity of its members, A.A. today would be unrecognizable

to its pioneers. In the early years, A.A. members were almost exclusively male, white, middle-class, middle-aged and of Western European extraction. They were men who had fallen very far, often from the top of their businesses and professions.

The A.A. of 1988 is huge, increasingly international, multi-ethnic, multiracial, cutting across social classes, less rigidly religious than it was in the beginning, more accepting of gay people, and of women, who now form one-third of the total North American membership and about half of the A.A. membership in big cities, increasingly, many turn to A.A. for help in earlier stages of their disease.

A much more abrupt and spectacular trend is that young people have streamed into A.A. in the last 10 years, most of them addicted to other drugs as well as to alcohol. Dr. LeClair Bissell, the founding director of the Smithers alcoholism center; in Manhattan, expresses the consensus of the alcoholism research and treatment world when she says: "There are almost no 'pure' alcoholics among young people anymore. They are hooked on booze and other drugs, or only on other drugs."

It is common now at A.A. meetings to hear a young speaker say, "My name is Joe, and I'm a drug addict and an alcoholic."

The dually addicted anger some A.A. members. One with 20 years of sobriety says: "This fellowship was formed to help suffering alcoholics, and alcoholics only. That's why it has been so successful—we don't monkey around with other problems."

In a few communities, A. A. members have formed groups billed for those "over 30." The message is clear: No druggies wanted. This development infuriates John T. Schwarzlose, executive director of the Betty Ford Center for substance abusers in Rancho Mirage, Calif.: "A.A. is the epitome of tolerance, flexibility and inclusiveness, but some drug addicts have told me about being turned away from A.A. meetings in the Midwest and South when they said they were just addicted to drugs. Now I tell them to say they are both alcoholics and drug abusers." In

the big cities and at A.A. headquarters, attitudes toward the dually addicted are much more welcoming.

For a long time, Alcoholics Anonymous was believed to be a purely North American phenomenon. It was thought that its themes of self-help and volunteerism would not transfer to more relaxed cultures. A.A.'s Ecuador-born coordinator for Hispanic groups voiced the early point of view among his Latin friends: "A.A. is O.K. for gringos, but not for us. In Latin America . . . if a man doesn't drink, he's not a macho." To his surprise, A.A. began to boom among Hispanics in the 1970's. Mexico's membership of 250,000 is now second only to that of the United States. Brazil, with 78,000 members, and Guatemala, with 43,000, are next-highest in Latin America.

Until recently, A.A. had been unable to gain a toe-hold in the Soviet Union or in Eastern Europe. The movement had been regarded there as possibly threatening, because of its precepts of anonymity and confidentiality, its religious overtones and the fact that it operates outside any governmental control. Then last summer, the Soviet Union sent to the United States four doctors specializing in addiction. They visited alcoholism-treatment centers, the Summer School of Alcohol Studies at Rutgers University and numerous A.A. meetings. When they returned home, they took back quantities of A.A. pamphlets translated for them into Russian. Still, the only Eastern European nation to embrace A.A. has been Poland. Its Government finally recognized what it called the "psychotherapeutic" value of A.A.

In the United States, those long familiar with A.A. meetings notice that there seem to be disproportionately high numbers from certain ethnic groups. "Alcoholism goes with certain cultures, such as the Celtic or the Scandinavian, that approve of drinking, or at least are ambivalent about it," says Dr. Bissell, "But in some environments or religions, people don't drink on principle. These abstinent cultures in the United States include Baptists, some other Southern Protestant sects and Mormons."

For a long time, there was a widely held belief that Jews did not become alcoholics. The work of JACS—Jewish Alcoholics, Chemically Dependent Persons and Significant Others—is helping to dispel that myth. Jews are present in large numbers, JACS says, at A.A. meetings in many cities where there is a significant Jewish population. But rarely do A.A. meetings take place in synagogues or Jewish community centers.

Sheldon B., an alcoholism counselor in New York, [p. 43] told of how, a few years ago, he approached his own rabbi with the idea of opening their temple to an A.A. group. He thought that Jewish members in any A.A. group might be more comfortable about accepting help in a synagogue setting rather than in a church. The rabbi informed him that there was no need: "There are no Jewish alcoholics." When Sheldon B. said. "But I am an alcoholic," the rabbi thought for a moment and then replied, "Are you sure you know who your real father was?"

Although there are black A.A. groups and mixed racial groups in large Northern cities, the number of blacks in A.A. does not appear to reflect the race's proportion in the nation–29 million, or 12 percent of the population.

"There is a great stigma in being black and being a drunk, even recovered," a black Philadelphia teacher declared at a meeting devoted to the subject, "I made the mistake of telling my principal that I had a problem. I checked myself into a treatment center. She used a hatchet on me."

As a black Milwaukee social worker explained: "The black community is afraid that if blacks admit their alcoholism, it will reinforce the white stereotype that they are shiftless ... The black community likes to think that oppression causes their alcoholism. ... Other oppressed minorities use the same argument. 'Who wouldn't drink?' they say. 'Our lives are so goddamned awful. ... Oblivion is the only way out of our pain.' "

Homosexuals are coming into A.A., and in sophisticated communities are welcomed. Some recovered alcoholics have

formed all-gay groups, just as there are special groups for women, doctors, agnostics, lawyers, airline pilots and others.

"Growing up in Alabama, I was taught to hate myself," one gay member told an A.A. meeting, "I was a nigger sissy. In A.A. I learned that God loves us all. My business in A.A. is to stay sober and help you if you want it."

A.A. surveys do not inquire whether members attend religious services or if they believe in God. There are no questions about ethnic or racial origins, sexual preference or whether alcoholism runs in the family. But a family predisposition to alcoholism is reflected strikingly within A.A. Often, speakers at meetings begin: "My name is Mary, and I am an alcoholic ... and my father [or mother] was an alcoholic."

Longtime A.A. members believe that it is hopeless to drag another into sobriety if the alcoholic is determined not to be helped or refuses to believe he is ill. Even so, the courts in some states are sending thousands of offenders to A.A. meetings instead of to jail. But the A.A. program sometimes catches on even with unwilling alcoholics.

THERE ARE MANY THINGS OUTSIDERS believe A.A. to be that it is not.

It is not a temperance organization or Prohibitionist society. A.A. does not want to save the world from gin. Nobody invites you to join A.A. You are a member if you say you are, or if you walk into an A.A. meeting with the thought that you have a drinking problem and you want to stop. There are no papers to sign, no pledges to take, no obligation to speak up, no arms twisted. The attitude of members toward those outside who drink moderately is "I wish I could drink as you do, but I can't."

A.A. is not a religious cult. Some members are agnostics or atheists. Many choose to believe that their "higher power" is their A.A. group. Most members prefer to call A.A.'s program "spiritual" yet God is mentioned directly or indirectly in five of the Twelve Steps. which A.A. uses to help heal individuals, and

this sometimes repels outsiders who might otherwise be attracted (Boiled down to six instantly understandable principles, the Twelve Step program might read: We admit we are licked and cannot get well on our own. We get honest with [p. 44] ourselves. We talk it out with somebody else. We try to make amends to people we have harmed. We pray to whatever greater Power we think there is. We try to give of ourselves for our own sake and without stint to other alcoholics, with no thought of reward.)

A.A. DOES NOT WORK FOR everybody. But then, nothing does. About 60 percent of those coming to A.A. for the first time remain in A.A. after going to meetings and assiduously "working the program" for months or even years. Usually, they stay sober for good. But about 40 percent drop out. These—statistics—refute a widely held notion that A.A. is always successful or an "instant fix." Even so, its success rate is phenomenally high.

Freudian analysis and religious faith, for example, may be two great ways to heal the human spirit, but they do not work *on their own* for alcoholics. The vast majority of doctors, psychologists and members of the clergy who are familiar with A.A., as well as almost all experts in alcoholism, make A.A. their No. 1 choice for a long-term program of recovery. A.A. precepts are built into the programs of every respected intensive alcoholism treatment center in the country, including those of Hazelden in Minnesota, Smithers in New York and the Betty Ford Center. John Schwarziose of the Betty Ford Center expresses a typical opinion: "Patients ask how important it is that they go to A.A. after they're through here. I say, 'I can give you a guarantee. When you leave here, if you don't go to A.A., you won't make it.' "

A.A. has no ties with political parties, foundations, charities or causes, nor does it sponsor research into alcoholism.

And unlike most tax-exempt organizations, A.A., whose current annual budget is $11.5 million, does no fund-raising. Nor does A.A. accept money from outsiders. The funds supporting headquarters services comes mainly from A.A.'s huge publishing empire, which distributes authorized literature to members.

Each group is self-supporting, passing a basket at every meeting to help pay for coffee, snacks, literature and rent for the meeting space. Those present often give a dollar. Others may just drop a coin into the basket. Some cannot give anything.

No member may donate more than $1,000 a year to A.A. Nor may a member be-[p. 47]queath more than $1,000, or leave property to A.A., which has never owned any real estate.

"The reason we discourage gifts and bequests," says Dennis Manders, a nonalcoholic who served for 35 years as the controller at A.A. headquarters, "is that we don't ever want some person dropping a million bucks in the A.A. hopper and saying, 'Now *I'm* going to call the tune.' "

About half of the groups contribute nothing at all for headquarters services. Many members feel that carrying the expenses of their "home group" is enough. This kind of autonomy and decentralization typifies Alcoholics Anonymous.

The average A.A. member, according to surveys, attends four meetings a week. After about five years of regular attendance, some A.A.'s go to fewer and fewer meetings. They may stop altogether when they feel they are able to function comfortably without alcohol. However, some speakers at meetings are full of cautionary tales about how they drifted away from A.A. and drank again, sometimes disastrously and for long periods of time, before returning to the fold.

The movement works in quiet and simple ways. Members usually give of themselves without reservation; exchange telephone numbers with newcomers; come to help at any hour when a fellow member is in crisis; are free with tips on how to

avoid that first drink. Most people in A.A. are flexible, tolerant of eccentrics, suspicious of rules and "musts." The lack of ritual can be a surprise to beginners. So is the absence of confrontation, finger-pointing, blame-laying, angry debate and chronic whining.

The essence of A.A. can only be guessed at in big, showy gatherings, such as its international conventions every five years. It is in the intimacy of neighborhood meetings that the truth, the flavor and an inkling of the reasons for A.A.'s success can be grasped. The members may meet in groups as small as 2 or 3, or as large as 200, but the usual attendance is somewhere between a dozen and 40 people. In New York City, the most active single[p. 57] A.A. spot anywhere, there is a choice of 1,826 listed meetings held by 724 groups every week.

As A.A. grew and diversified, the stigma of alcoholism gradually faded. There were many stages along A.A.'s road to respectability, beginning in the 1940's, that gradually transformed the public's perception of the society of recovered drunks from a butt of disbelief and even ridicule to that of an accepted and admired organization. None was more significant than the action taken by the American Medical Association. In 1956, the A.M.A.'s trustees and its House of Delegates declared that alcoholism was a disease, thereby validating a central belief of A.A., from its cofounders on, that it is a sickness, not a sin.

Now the Supreme Court of the United States is debating the legality of the issue. Last Dec. 7, the court heard a challenge by two Vietnam War veterans against the Veterans Administration for excluding "primary alcoholism" (in which drinking itself is the root disorder) from the list of illnesses and disabilities that allow veterans more time to claim education benefits. Extensions can be granted to veterans hindered by physical or mental problems "not the result of their own willful misconduct." The justices are expected to hand down an opinion before the Court's term ends in June.

THE STRUCTURE OF A.A. is a little harder to grasp than the disease theory of alcoholism. It is close to the truth to say that A.A. consists of a million Indians and no chiefs. And that it is less an organization than an organism that keeps splitting, amoebalike, into ever more groups, if a member doesn't like how things are run in his group, he can start another one with people he finds more compatible. This has given rise to an A.A. saying: "All you need to start a new group is two drunks, a coffee pot and some resentment."

There is a structure in Alcoholics Anonymous, but it would set any conventional notion of how to run a business on its head. Basically, the local groups are boss, and the board of trustees and the staff at the General Service Office are supposed to carry out their orders. The board of trustees is make up of 14 A.A. members and 7 nonalcoholics.

Although alcoholics hold all the top administrative jobs, they never handle money. A.A.'s financial operation is run by nonalcoholics. The reason is that Bill Wilson and the early A.A.'s were afraid that if anybody running A.A. fell off the wagon, that would be bad enough, but if he were handling finances as well, the results could be disastrous. The philosophy has endured.

The manner in which A.A. directs its collective affairs and sets policy can be seen most clearly—or in all its democratic confusion—at its yearly General Service Conference, the closest approximation to a governing body of A.A. About 135 people attend, including 91 delegates elected at regional A.A. assemblies in the United States and Canada. Also on hand are the trustees of the board and representatives of the headquarters staff.

The day-to-day business of Alcoholics Anonymous has been carried on since 1970 in a brick building at 468 Park Avenue South, in midtown Manhattan. Whatever policies are decided at the conference are carried out by the headquarters staff. Their

jobs are divided into specialties, such as literature, treatment centers, prisons, public information and cooperation with professionals—doctors, counselors, social workers and teachers, for example—in the alcoholism field. And just in case someone should become overly fond of a specialty, all the top staff members, except the general manager and the Hispanic coordinator, regularly rotate jobs every two years. The same frequent rotation occurs at every level in A.A. Officers in local groups usually step down after six months.

The seven nonalcoholic trustees, who are often experts in some profession, such as medicine, law, banking or social work, serve a special need. Joan K. Jackson, a sociologist with long experience among alcoholics, explains: "We can use our full names in public. We are not perceived by outsiders as having any vested interest. Privately within A.A., our greatest function is as gadflies and questioners."

What makes A.A. head-[p 92]quarters run is the A.A. World Services publishing empire. It now brings in $8.8 million annually, or 76 percent of A.A.'s yearly corporate revenues. It is the cause of some trepidation among those who have taken what amounts to a vow of poverty. Each year, A.A. distributes 7 million copies of more than 40 pamphlets (mostly gratis for members), and almost a million and a half copies of 6 books and 2 booklets. Seven million copies of the Big Book (A.A.'s central text, published in 1939, whose formal title is "Alcoholics Anonymous") have been sold. Last year alone, about a million Big Books were purchased, virtually all of them at A.A. meetings, alcoholic rehabilitation centers or through mail orders.

At the time of his death, early in 1971, Bill Wilson was earning about $65,000 a year in royalties from the Big Book and three other books he wrote for A.A. Last year, his widow, Lois, received $912,500 in royalties. Under the terms of an agreement Bill concluded with A.A. headquarters in 1963, she was

allocated 13.5 percent of Wilson's royalties. Another 1.5 percent went to his last mistress, who died a few years after Bill.

THERE HAS BEEN almost no negative publicity about Alcoholics Anonymous over the five decades of its history. Extensive research turns up only a handful of critical views in the press. Writing in The Nation in 1964, Jerome Ellison charged that A.A.'s conservative top councils had lost touch with the ever more diverse rank-and-file. The same year, Arthur H. Cain, a New York psychologist, in a book and articles for various magazines, called A.A. a "cult" that enslaved its members to self-righteous sobriety. Bill Wilson's reaction was typical of the man's tolerance. The co-founder, trying to calm the ensuing fuss at headquarters, said: "In all the years, this is the first thorough-going criticism our fellowship ever had. So the practice of absorbing stuff like that in good humor should be of value." It was the first public criticism, and it proved to be one of the last.

Privately within A.A., there has been growing dissatisfaction with headquarters. Some members say staff members are becoming frozen in bureaucracy and are overly sensitive to pressure from the most rigid and narrow-minded members, particularly old-timers, who regard the Big Book and other authorized A.A. literature almost as Holy Writ.

"If anything is going to destroy A.A.," says Dr. John Norris, a nonalcoholic physician, friend of Bill Wilson's and for many years chairman of A.A.'s board of trustees, "it will be what I call the 'tradition lawyers.' They find it easier to live with black and white than they do with gray. These 'bleeding deacons'—these fundamentalists—are afraid of and fight any change."

Nan Robertson is a reporter for The Times's culture department. She is a Pulitzer Prize-winner and a longtime member of Alcoholics Anonymous.

APPENDIX I—"How AA Members Cooperate With Other Community Efforts to Help Alcoholics"

How AA members COOPERATE with other community efforts to help alcoholics

(General Service Conference)

This is A.A. General Service Conference-approved literature

I am responsible. . .

When anyone, anywhere, reaches out for help, I want the hand of A.A. always to be there. And for that: I am responsible.

"Cooperation but not affiliation"*

ALCOHOLICS ANONYMOUS® is a fellowship of men and women who share their experience, strength and hope with each other that they may solve their common problem and help others to recover from alcoholism.

•The only requirement for membership is a desire to stop drinking. There are no dues or fees for A.A. membership; we are self-supporting through our own contributions.

•A.A. is not allied with any sect, denomination, politics, organization or institution; does not wish to engage in any controversy; neither endorses nor opposes any causes.

•Our primary purpose is to stay sober and help other alcoholics to achieve sobriety.

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HOW A.A. MEMBERS COOPERATE
With Other Community Efforts to Help Alcoholics

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Some Basic Ideas That A.A. Experience Shows About Cooperation

In many countries, the alcoholism picture is changing rapidly. Even in A.A., the picture changes constantly.

For example, some early A.A. members had to play amateur doctor for alcoholics in the D.T.'s, because there was no one else to do it. Some A.A.'s furnished food, shelter, and loans to indigent drunks.

Today, these practices have virtually disappeared from A.A. Often, many professional persons furnish alcoholics with the services that A.A. does not provide. The A.A. pamphlet "A Brief Guide to A.A." and the flyer "A.A. at a Glance" tell what A.A. does and does not do.

But many A.A.'s are continually exploring new ways of helping alcoholics in institutions and alcoholism programs that did not exist during A.A.'s formative years.

By now, A.A. has accumulated an enormous bank of experience in ways of cooperating that preserve the spirit and the letter of A.A.'s Twelve Traditions (see p. 25). This pamphlet describes and summarizes that experience.

Our collective observations suggest that the following seven basic ideas be kept always in mind.

1. *No hard-and-fast rules can be laid down in advance covering all cases–about exactly where the line is to be drawn between cooperating and affiliating.*

Circumstances vary between one instance and another, and at different times. So good judgment is needed in each individual case, and it helps to be familiar with A.A. experiences already recorded.

This pamphlet covers basic ideas, using mostly the A.A. experience summed up in the Twelve Traditions.

You can find the best detailed explanation of these ideas in their original written sources, the books "Twelve Steps and Twelve Traditions" and "A.A. Comes of Age."

2. *A.A. is in competition with no one.*

Our ability to help other alcoholics is *not* based on scientific or professional expertise. As A.A.'s, *we are limited to sharing*

our own firsthand knowledge of the suffering of an alcoholic, and of recovery.

Our recovery is based on the "Twelve Steps" of A.A. We use these steps along with the guidance of our Traditions.

Drawn from hard-learned lessons—mistakes as well as successes—the Traditions are largely summed up in this statement from the A.A. Preamble:

"The only requirement for membership is a desire to stop drinking. There are no dues or fees for A.A. membership; we are self-supporting through our own contributions. A.A. is not allied with any sect, denomination, politics, organization, or institution; does not wish to engage in any controversy, neither endorses nor opposes any causes. Our primary purpose is to stay sober and help other alcoholics to achieve sobriety."*

A.A. members have one unique qualification for helping problem drinkers, of course—our personal experience. We have been there. But in addition to our specific A.A. function of sharing our experience, we can also cooperate with others dealing with alcoholism as long as we are guided by our Twelve Traditions.

The A.A. Traditions on being self-supporting, on being nonprofessional, on avoiding controversy, and on not affiliating also suggest that A.A. members not criticize, obstruct, or hinder any other efforts to help alcoholics. In the long run, to do so does not enhance the welfare of A.A. Instead, it helps to promote disrespect, sometimes even antagonism toward A.A. The chief loser is the still-suffering alcoholic.

We A.A. members can help best, not by passing judgments, but again simply by sharing our own personal experience. If we are really meeting the responsibility of carrying the A.A. message, we have our hands full, and have no time to worry about rivalry with anybody!

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3. *Non-A.A. agencies and professionals are under no obligation whatever to abide by A.A.'s Traditions. The Traditions are strictly for the guidance of A.A.*

But it helps in securing more effective cooperation if such agencies and professionals can be made familiar with A.A.'s Traditions.

4. *A.A. members employed in the field of alcoholism need to make it very clear in which capacity they are acting or speaking—at all times.*

A.A. has among its members men and women who are trained psychiatrists or physicians of other disciplines, clergymen, jurists, social workers, psychologists, personnel administrators, corrections officers, nurses, educators, counselors, community organizers, executives, administrators, labor-management consultants, or the like.

Many of these A.A.'s—*apart from their own personal membership in A.A.*—work in non-A.A. programs concerned with alcohol problems. *Their professional or occupational skills and services are in no way a part of their A.A. membership.* They are paid for their professional or job performance, *not* for what they do to stay sober in A.A. This is not always understood by their fellow A.A. members, or by their non-A.A. co-workers.

So it is very important that such A.A.'s always clarify the difference between their employment and what they do *as A.A. members.*

A.A. Guidelines for Members Employed in the Alcoholism Field and the section on the Eighth Transition (especially pp. 169-171) in the book "Twelve Steps and Twelve Traditions" help both these members and the rest of us think straight about the differences between the professional and the A.A. roles.

5. A.A.'s can also be good <u>volunteers</u> in non-A.A. programs—as long as it is clear that they do not represent A.A.

Many A.A. members—lay people as well as professionals—also help alcoholics in numerous non-A.A. ways as volunteers in non-A.A. activities in the alcoholism field. But we do so as *private citizens* concerned about the health problem of alcoholism, *not* as A.A. members and not as representatives of any A.A. body or of A.A. as a whole.

For best results in cooperation with non-A.A. community efforts, we need to stop short of structurally or formally linking A.A. with any other program or enterprise, no matter how worthy.

6. We cannot discriminate against *any* prospective A.A. member, even if he or she comes to us under pressure from a court, an employer, or any other agency.

Although the strength of our program lies in the voluntary nature of membership in A.A., many of us *first* attended meetings because we were forced to, either by someone else or by our inner discomfort. But continual exposure to A.A. educated us to the true nature of our illness. We then developed a desire for a happy, sober life like that of other members we saw, and we attended meetings willingly and with gratitude.

So we have no right to withhold the A.A. message from *anyone*–no matter who referred that person to us, or what his or her attitude is at first. *Who* made the referral to A.A. is *not* what A.A. is interested in. It is the problem drinker who is our concern.

Regardless of our initial opinion of any newcomer, we cannot predict who will recover, nor have we the authority to decide how recovery *should* be sought by any other alcoholic. Some of us need different kinds of help, and it may come best from non-A.A. sources, as pointed out in "Alcoholics Anonymous" (p.74) and "Twelve Steps and Twelve Traditions" (p.61).

7. As we mature in A.A., we generally become less fearful and rigid.

Those of us blessed with recovery in A.A. need to remember that modesty will win more friends for A.A. than smugness, arrogance, or a know-it-all attitude. Saying "We know the *only* way to recovery" is an egotistical luxury we can no more afford than we can afford resentments.

However, shortly after we come into A.A. and begin to recover, we naturally feel great relief. We may find ourselves praised; within A.A., we begin to build a good reputation, which gradually replaces the shame of our drinking days.

This can easily turn into highly intense gratitude and loyalty to A.A. Then, almost before we know it, we may find ourselves sounding possessive and sensitive about A.A.– as if it were an exclusive society with a monopoly on the truth. Some of our rasher statements sound pretty antagonistic to the non-A.A. world.

At this time, many of us are most zealous in Twelfth Step work. This may be one of the most valuable phases of our newfound A.A. life, giving us a big shove toward health. It helps bind us to the Fellowship.

But as recovery goes on we generally grow beyond that defensive, dogmatic phase. As some put it, we try to become sober, not just dry. Others say, "We try to go beyond sobriety. Just not drinking is not enough."

In calmer moments, we recall that thousands of us received aid from families and friends, a hospital or a clinic, a physician or a professional counselor of some kind. We realize that the boss who fired us, the relatives who scolded us, or the cop who warned us also helped us–helped us see we had a drinking problem.

We begin to outgrow our defensive possessiveness. With no less devotion to A.A., but without our former fanaticism, we start to lose our fear that some non-A.A. program will usurp

A.A.'s role, or take away our newly found pride, gratitude, and other good feelings. The longer we A.A. members stay sober, the more likely it is that we will say, "*Anything* that works toward recovery for the alcoholic is good, and this includes hospitals, rehabilitation centers, state or provincial alcoholism centers, religion, and psychiatry–as well as A.A."

Perhaps we become more "attractive" examples of what A.A. can do, in line with our Tradition Eleven.

How Bill, Dr. Bob, and Other Early A.A.'s Cooperated

Right at the beginning, A.A.'s co-founders set us good examples of how to cooperate with non-alcoholic professionals to help alcoholics.

Both the book "A.A. Comes of Age" and Bill's 1958 Grapevine article "Let's Be Friendly With Our Friends" are bright with the gratitude our Fellowship owes to so many nonalcoholics. They offer present-day A.A.'s practical guidelines.

With modesty and friendliness, Bill and Dr. Bob tirelessly continued their efforts to be cooperative throughout their lives, building for A.A. a large reservoir of goodwill among professional men and women.

Some Questions and Answers About Cooperating —based on misunderstandings most likely to occur

1. Q. Does A.A. have a clearly defined position in relation to others in the alcoholism field?

A. Yes. The following statement has often been reaffirmed by the A.A. General Service Conference:

A.A.'s Position in the Field of Alcoholism

Alcoholics Anonymous is a worldwide fellowship of men and women who help each other to maintain sobriety and who offer to share their recovery experience freely with others who may have a drinking problem. The A.A. program consists basically of "Twelve Steps" designed for personal recovery from alcoholism.

The Fellowship functions through approximately 40,000 local groups in more than 90 countries. Some 1,000,000 alcoholics have achieved sobriety in A.A., but members recognize that their program is not always effective with all alcoholics and that some may require professional counseling or treatment.

A.A. is concerned solely with the personal recovery and continued sobriety of individual alcoholics who turn to the Fellowship for help. The movement does not engage in the fields of alcoholism research or medical or psychiatric treatment, and does not endorse any causes–although A.A. members may participate in such activities as individuals.

The movement has adopted a policy of "cooperation but nonaffiliation" with other organizations concerned with the problem of alcoholism.

Alcoholics Anonymous is self-supporting through its own groups and members and declines contributions from outside sources. A.A. members preserve personal anonymity at the level of press, films. and broadcast media.

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2. Q. Which of the A.A. Traditions do members use in cooperating successfully with other community efforts to help alcoholics?

A. All of them, really. But the following are especially pertinent:

One–reminding us to place the welfare of A.A. as a whole before our personal wishes.
Two–reminding us that no A.A. member can tell other A.A.'s what to do or not to do.
Three–reminding us that we cannot judge whether or not any alcoholic has a desire to stop drinking buried secretly in his or her heart.
Five–reminding us that A.A.'s primary purpose is to carry the message, period.
Six–reminding us never to give the impression that A.A. itself, or any A.A. group, endorses (or opposes) or finances any other enterprise, no matter what our opinion of it is. Also pointing out that seeking prestige always creates problems for us.
Ten–reminding us never to let the name of A.A. get involved in any public controversy.
Eleven–reminding us that our public relations policy is to make the A.A. way of life look attractive, and never to mention in the public media (broadcast or print) *anyone's* A.A. membership.
Twelve–reminding us to place A.A. principles before personalities.

3. Q. What A.A. channels does the Fellowship use for cooperating with others in the field of alcoholism?

A. At least six:

a. *The individual A.A. member* – acting as a private citizen, not as an A.A.

b. *The A.A. group.* For a clear description of the structure and functions of the chief operating unit of A.A. – the local or neighborhood group – see the pamphlet "The A.A. Group."

c. *The A.A. intergroup or central office.* Most metropolitan areas have A.A. intergroup offices (listed in the phone book), supported by local groups. These often receive calls from suffering alcoholics and distribute them among the groups.

Your local intergroup probably knows of the non-A.A. alcoholism efforts in your community, and can offer information about the possibility of helping alcoholics in several ways in addition to carrying the A.A. message.

d. *Committees on public information, on cooperation with the professional community, on treatment facilities, and on correctional facilities.* Members of these committees – which are set up by either an intergroup or an area general service committee (or sometimes by both) – are A.A.'s who have specific responsibility for keeping the public accurately informed about A.A. They make special efforts to insure that local professionals and agencies working with alcoholics know about A.A. and how to refer problem drinkers to us.

e. Your area general service committee. This committee (listed in the A.A. directory) is primarily responsible for local cooperation in A.A. *world* service affairs, through A.A.'s yearly General Service Conference and the General Service Office in New York.

However, where local A.A. services are not otherwise provided, sometimes an area general service committee helps furnish local, face-to-face A.A. services, and may have other committees (as noted earlier).

Your group's G.S.R. or your district committee member can often tell you of non-A.A. efforts, which welcome and need the help of A.A. members functioning as private citizens.

f. *The General Service Board of A.A., and G.S.O.* The board has committees on treatment facilities, correctional facilities, public information, and cooperation with the professional community. G.S.O. staff members also have assignments in those fields.

The board and G.S.O. maintain close liaison at the national level with publications and news networks, as well as national and international organizations interested in alcoholism.

A professional display on A.A. is shown at national scientific meetings. G.S.O. publishes *About A.A.*, a newsletter sent free to professionals in the alcoholism field who ask for it, and also distributes a list of all A.A. central offices to those who want to refer alcoholics to A.A.

In addition, at the annual General Service Conference meeting, there are committees on treatment facilities, correctional facilities, public information, and cooperation with the professional community. These Conference committees are composed of area delegates representing groups in the U.S. and Canada. The entire Conference reviews G.S.O.'s efforts at cooperation and makes suggestions.

4. Q. What other efforts in the field of alcoholism do A.A. members cooperate with?

A. There are too many alcoholism programs and agencies operating now to name them all, but most come under one of these classifications:

a. Federal, state, provincial, and municipal alcoholism programs and agencies. Generally, these try (1) to help men and women with drinking problems, and (2) to provide education that will bring about better understanding of, and attitudes toward, alcoholics.

Such non-A.A. efforts may be responsible for clinics, hospitals, detox units, or halfway houses. They also fund and direct police, judicial, and other programs, as well as welfare, social, and employment agencies. They may promote scientific seminars and meetings on the disease for interested professional people; conduct or subsidize research on alcohol problems; offer professional consultant services to business, religious, governmental, and other organizations; provide educational programs on alcohol and drinking; and furnish films and printed materials about alcohol and about alcoholism.

A.A., of course, does none of these. Whether in person or in print, A.A. members – as A.A. members – simply carry the A.A. message of personal experience.

See the A.A. Guidelines on cooperating with those programs that interest you (complete listing on p. 27).

b. *Private health agencies.* Many privately sponsored and/or voluntary national and local committees are now involved in alcoholism. Some provide aid and counsel to the individual alcoholic through information centers. They work to arouse public opinion and mobilize community action. Many work directly with legislative, medical, and educational leaders in areas beyond A.A.'s scope.

From many of these, alcoholics first learn about A.A.

c. University-affiliated agencies and private study groups. Research and experiments help uncover knowledge of biochemical, psychological, sociological, and other facets of alcoholism. In addition to research (both pure and applied), clinical therapy, surveys, consultation, and other services are often involved.

A.A. is not, of course, a research organization, since our purpose is to demonstrate to the individual suffering alcohol*ic* how we get well, not to explore scientifically the nature of alcohol*ism*. Most A.A.'s, however, are grateful to the qualified scientists still seeking truths that may someday help many people with our illness.

d. Law-enforcement, judicial, and correctional agencies. A.A. groups now meet in more than 1,000 correctional institutions in the U.S. and Canada. Many other law-enforcement, judicial, and transportation agencies are now developing programs for helping problem drinkers, rather than just throwing them into jail over and over, in the old "revolving door" system.

e. *Hospitals, rest homes, halfway houses, rehab centers.* This classification includes voluntary and general hospitals, as well as state, county, or city mental hospitals. Ever since the original Bill W. - Dr. Silkworth collaboration at Towns Hospital in New

York, and the Dr. Bob - Sister Ignatia teamwork at St. Thomas Hospital in Akron, A.A. members have been working closely with hospitals to see that alcoholics get good medical care.

The A.A. program is the core of therapy at many rehab facilities for alcoholics. So, in 1967, the General Service Conference of A.A. adopted a "position paper on alcoholic rehabilitation centers." It points out that such places accept non-A.A. financial support. They may suggest A.A. to patients, and may hold A.A. meetings on their premises, but they are *not* "A.A. facilities" in any sense.

Such institutions are asked not to use any name identified with A.A., such as Twelfth Step House or Alanon House. *All A.A. groups that meet in institutions are urged to use a name different from that of the institution.*

f. *Business, industry, labor, and government.* Many companies, labor unions, and governmental units (including armed services) have developed programs to help alcoholics within their ranks.

g. *Organizations not primarily concerned with alcoholism.* Every year, more and more requests are received for A.A. literature, or for A.A. members to speak before church or social groups, civic clubs, schools, and other organizations. Traditionally, A.A. has been grateful for such interest and has always been willing to carry the message in this way.

5. Q. Does an individual A.A. member work for legislation on alcoholism?

A. This is outside of A.A.'s primary purpose (Tradition Five). As a private citizen, though, any A.A. member may take any action for or against legislation. But he or she is very careful *never* to involve his or her A.A. membership or seem to be acting as a representative of A.A. in such activities.

6. Q. Is it within the A.A. Traditions for the A.A. name to be used in legislation?

A. No, not if it implies A.A. endorsement or affiliation with a governmental body. Requiring that members of state commissions be A.A. members could force them to break their anonymity at the public-media level. Of course, this problem is avoided if such members are described simply as "recovered alcoholics." (In the same way, A.A. members hired as counselors for alcoholics should be called "alcoholism counselors," *not* "A.A. counselors.")

7. Q. Does A.A. recommend people for jobs in alcoholism programs?

A. No. A.A. as a fellowship does not, nor does any A.A. office or committee or group. If asked, individual members may recommend someone – but with the clear understanding that the reference is strictly personal, *not* made in behalf of A.A.

8. Q. Do A.A. members serve with non-A.A. agencies in the field of alcoholism?

A. Yes, if they want to and are qualified – as long as they make it clear that they do so as private citizens, *not* as A.A. members and *not* as representatives of A.A.

9. Q. When an A.A. member employed in the field of alcoholism speaks at an A.A. gathering, what about mentioning his or her *professional* position in advance publicity or on the printed program?

A. If he or she speaks *as an A.A. member*, only the first name and A.A. group or hometown are used as identification – the non-A.A. connection is not mentioned. In A.A., there are no big shots. We are all equal – just plain A.A. members! The host committee or inviting group shares the responsibility of protecting the member's anonymity in all public news media.

If he or she speaks *in the non-A.A. job capacity*, full name, title, and institution can appropriately be used; but, of course, his or her A.A. membership is not mentioned.

It is best that this be carefully arranged in advance.

10. Q. Do A.A. members working on state commissions and other agencies do Twelfth Step work in connection with their jobs?

A. No. Many such A.A.'s explain it this way: On the job, they refer alcoholics to A.A. and thereby make Twelfth Step work possible – but they do not twelfth-step alcoholics themselves while they are in their professional role.

It is A.A. tradition that members do not get paid for Twelfth Step work. We often say we can keep sobriety only by *giving* it away. Like a doctor or a lawyer who is an A.A. member, a counselor who is an A.A. is paid for his or her professional services, not for carrying the message.

Of course, when a professional social worker who happens to be an A.A. member is faced with a client who has a severe drinking problem, the social worker may be tempted to carry the message at once, by sharing right on the spot his or her own personal experience.

However, it has been proved over and over that, in the long run, this can be very bad for the client, for A.A. as a whole, and for the professional, too. It gives the client a false impression of A.A. – he or she sees it as part of a social welfare agency. It betrays the true non-professional nature of A.A. And it confuses the role of the professional social worker with that of the A.A. sponsor.

It has been shown many times that it is better for the social worker to make a strong, personal referral to A.A. This makes it possible for the Twelfth Step work to be done by some other A.A. member, whose role is thus clearly only that of a twelfth-stepper.

If the social worker and the client later see each other at A.A. meetings, the social worker can then explain that he or she is there for his or her own sobriety, that A.A. is not the appropriate setting for professional casework, nor is A.A. twelfth-stepping a part of professional social work practice. (Of course, this does not prevent the professional from carrying the message to A.A. prospects he or she encounters *outside* his or her job.)

11. Q. Do A.A. groups, intergroups, or service committees ever refer alcoholics or their families to non-A.A. agencies?

A. Of course. When an alcoholic needs some professional service (such as medical care, dental work, legal advice, vocational counseling, or welfare) beyond the scope of the A.A. program, A.A. members refer alcoholics and their families to competent professionals and agencies that provide such service.

Members of the alcoholic's family are almost always referred to Al-Anon Family Groups and Alateen.

But referring an alcoholic to some professional does not in any way lessen the responsibility of the A.A. member to carry the message in the best way possible, and to furnish good sponsorship. It is not good A.A. simply to dump an alcoholic into the lap of professional agencies either because we feel we do not have the time for him or her or because the alcoholic is troublesome and demanding. Most of us recall with gratitude the enduring patience and great kindness older members showed us when we were new.

Since we want professional agencies and people to refer alcoholics to us, it is also our responsibility to make sure the professional community is fully aware of A.A. and how to reach it. A.A. meeting lists and telephone numbers need to be continually distributed among all professionals who come into contact with problem drinkers.

12. Q. Does A.A. participate in publicity and other activities jointly with non-A.A. alcoholism programs or agencies?

A. Only when it can be made perfectly clear that A.A. is in no way affiliated with, or endorsing, other enterprises and when such activity does not engage A.A. in any public controversy. We should repeatedly point out to the public the unique nonprofessional nature of A.A. help, the fact that it is given free, and the exact services that A.A. does and does *not* offer.

Of course, this need not prevent A.A. speakers from carrying the message by appearing on the same programs with non-A.A.'s – as long as it is explained definitely that A.A. is a separate entity, cooperative but not affiliated, that each A.A. member speaks only for himself or herself at all times, and that no individual A.A. member represents any A.A. group, committee, or office or the Fellowship as a whole.

However, experience singles out one A.A. activity that definitely should *not* be a joint function with any other enterprise. No A.A. answering service or central office (intergroup) should ever be located in an alcoholism information center or in any club for alcoholics. This does imply affiliation and always leads, in one way or another, to grief for all concerned.

13. Q. When A.A.'s name has been linked with another agency for fund-raising, what can an A.A. group or central committee do?

A. It tries at once to cut that link. A friendly, honest, face-to-face discussion usually solves the problem. We cannot expect a non-A.A. to understand our Traditions and their importance in our recovery and in the survival of our Fellowship. It is *our* responsibility to explain A.A. operations courteously and patiently over and over. Most agencies are quite glad to cooperate.

When a public statement *is* necessary – as a final resort – it should be friendly in tone, explaining that A.A. is not affiliated

with any other alcoholism program, raises no funds from the public, and *accepts contributions only from its own members.* The point can also be made that A.A. neither endorses *nor* opposes any other plan for alcoholics. We can cooperate without endorsing.

14. Q. Are non-A.A. activities publicized through group meeting announcements, local A.A. bulletins, newsletters, or special A.A. mailings?

A. This is a matter for local decision. In any case, any appearance of affiliation, endorsement, or opposition by A.A. needs to be avoided.

Much depends on how non-A.A. news is handled. In the A.A. Grapevine, for instance, it is carried in a special section on tinted paper, and is clearly identified as non-A.A. in origin. Some local central office bulletins are equally cautious, and manage successfully to give their readers a lot of highly useful and helpful information about non-A.A. alcoholism activities in the community.

15. Q. Do A.A. groups accept help from outside sources in the form of free literature, rent, printing, or other financial aid from a nonmember, from a government commission on alcoholism, or from any other enterprise outside A.A.?

A. No. Our Tradition Seven says, "Every A.A. group ought to be fully self-supporting, declining outside contributions." Note the word "fully," and read "Twelve Steps and Twelve Traditions." p. 160.

If a group finds it a hardship to buy literature, G.S.O. can probably help, or some nearby A.A. group or central office or the area general service committee can. All new groups receive a free supply of literature from G.S.O. Discount packages are available for institutions and public information work.

When a meeting place is offered at no charge, it is customary for an A.A. group to make at least a small regular donation as "token" rent. *Learning to be responsible for paying our own way is part of our recovery.*

16. Q. Do A.A. groups or committees own or manage hospitals, rest homes, and other rehabilitation facilities in the community?

A. Traditionally, A.A. groups, intergroups, and committees do not own, operate, or manage such ventures.

17. Q. Can A.A. groups meet regularly in hospitals, rehab centers, rest farms, halfway houses, detox units, or inpatient or outpatient alcoholism clinics without implying affiliation?

A. This *can* lead to confusion about A.A.'s relationship to any alcoholism treatment center.

But at least three solutions have worked. In some places, local A.A. members take A.A. meetings into *any* center exactly as A.A.'s have been taking meetings into hospitals and correctional facilities since 1941. The agency staff and officials let the A.A.'s run their own meetings with the patients, and thus the patients see the difference between the methods of A.A. and those of the center.

In other cases, meetings held by "outside" A.A.'s on such premises are *not* "regular" A.A. meetings, but information meetings *about* A.A., and the distinction is explained clearly, over and over. This is the way A.A.'s have taken part in many "courtroom classes" on alcoholism for nearly 20 years – by describing the A.A. program to persons held on alcohol-related offenses. (For more details on these classes, see A.A. Guidelines on Cooperating With Court, A.S.A.P., and Similar Programs.)

A third solution is increasingly common. Today, regular A.A. groups often are formed within such facilities, taking care to meet this six-point definition of an A.A. group: "(1) All mem-

bers of a group are alcoholics, and all alcoholics are eligible for membership; (2) as a group, they are fully self-supporting; (3) a group's primary purpose is to help alcoholics recover through the Twelve Steps; (4) as a group, they have no outside affiliation; (5) as a group, they have no opinion on outside issues; (6) as a group, their public relations policy is based on attraction rather than promotion, and they maintain personal anonymity at the level of press, radio-TV, and film."

The position of A.A. groups in treatment facilities was further clarified by this recommendation from the 1978 A.A. General Service conference: "A.A. members who meet with the administration of a treatment facility *concerning the formation* of an A.A. group on its premises should explain group autonomy as well as what A.A. can and cannot do (Traditions), and also have a good understanding of the facility's rules and regulations. After mutual agreements are reached, it is important that this information be shared with the A.A.'s who will be attending the group's meetings. It was suggested that groups meeting in treatment facilities try to abide by the self-support Tradition. If money for rent is not accepted by a facility, groups should contribute in some other way. It was also felt that A.A.'s employed by the facility should not run the groups at the facility."

18. Q. What can be done when serious differences arise between an A.A. group or committee and others interested in alcoholism?

A. A frank, friendly, face-to-face discussion works best. Often, the area delegate to the General Service Conference, or a past delegate, is able and happy to participate in mediating such differences. Finding a solution depends on willingness to communicate with, and listen to, one another.

Seeming differences can arise because of misunderstanding of facts – a simple lack of information. For example, non-A.A.'s may be uninformed about A.A. Traditions, and many A.A.'s are

ignorant of the necessary legal regulations governing some facilities outside A.A. Usually, all that is needed is an exchange of information and views, with emphasis on common desires. This can eliminate the problem and preserve goodwill, so all concerned can get back to helping the alcoholic in their own special ways.

19. Q. How can "outside" A.A. groups and members help patients who are being discharged from treatment facilities?

A. The most important service that can be offered, it is generally agreed, is sponsorship. Sometimes, a patient may acquire an "outside" A.A. sponsor before leaving the facility. Otherwise, sponsorship should be arranged as soon as possible in the crucial first days after discharge, so that there is no break in the patient's involvement with A.A.

20. Q. What is A.A.'s policy when an alcoholic comes to A.A. meetings in order to get a suspended sentence or parole or to save a job?

A. First, A.A. accepts the alcoholic. True, A.A. is a voluntary program, but many of us remember how strongly we resisted A.A. at first. We also know, though, that many of us resisters eventually embraced the program because we wanted it, after being around it awhile. So it is a good idea to explain this to the official who refers alcoholics to A.A. It also helps to point out that, although A.A. members can try to help, they cannot guarantee anyone's future sobriety or conduct (even their own!), nor accept responsibility for more than "sharing the A.A. experience" with the prospect.

It is useful, too, for A.A.'s to remember that, in the final judgment, officials are responsible for their own decisions. Their decisions are *not* A.A.'s responsibility.

21. Q. What is the relationship of A.A. to retreats or other meetings for alcoholics which may (or may not) be held under the auspices of religious denominations?

A. There is no formal relationship at all, any more than there is a structural or official relationship between A.A. and any church, temple, ethical or humanist or agnostic society, or meditation center that a member may attend.

A.A. does not sponsor such gatherings. There is no such thing as an "A.A. retreat," any more than there is an "A.A. farm" or an "A.A. rehab center."

22. Q. Does cooperating with others in the alcoholism field really do any good?

A. There is overwhelming evidence that cooperation *does* pay off handsomely for the individual alcoholic and for A.A. as a whole. This evidence comes from the 1977 survey of A.A. groups in the U.S. and Canada.

It is this: *Almost one-third of those surveyed credited outside assistance – in the form of medical, psychological, spiritual, or other counseling – as playing an important part in directing them to A.A.*

The finding means, probably, that more than one-third of our members are alive and sober in A.A. today because of A.A. cooperation with others in the field of alcoholism.

And millions more sick alcoholics are still out there, waiting....

Committees on Cooperation with the Professional Community

The General Service Board in 1970 set up its Committee on Cooperation with the Professional Community (C.P.C.). In 1971, the General Service Conference followed suit with the

formation of its Cooperation with the Professional Community Committee.

In many areas, some of the jobs formerly done by public information and institutions committees are now seen as logical functions of cooperation with the professional community. Of course, the different committees overlap, and local circumstances usually determine who does what. It is suggested that in areas where there are existing public information and institutions committees, members from these committees be included in the organizational and regular meetings of a new C.P.C. committee.

1. Q. What is the purpose of area or local C.P.C. committees?

A. Members of these committees inform those working in the field of alcoholism about A.A. – where we are, what we can do, and what we cannot do. An attempt is made to establish better cooperation between A.A.'s and professionals in the field.

2. Q. How do area and local C.P.C. committees get started?

A. An area C.P.C. chairperson and co-chairperson may be elected or appointed by the area general service committee. District C.P.C. chairpersons and co-chairpersons may be elected or appointed in each district. In some places, intergroup committees elect or appoint local C.P.C. committees.

3. Q. What are the functions of area and local C.P.C. committees?

A. Many committees initially do a survey of the kinds and number of local resources offering help, treatment, etc. for the alcoholic – what the present relationship of each with A.A. is – whether it might be improved – and in general, helpful information for individual committee members to follow up.

When this list of professionals, both individuals and organizations, has been compiled, members of C.P.C. committees may:
a. Make an initial contact (letter, phone, face-to-face).
b. Offer to come and talk about A.A. to the interested professional – sharing what A.A. can and cannot do.
c. Offer to take the professional to an open A.A. meeting in the area.
d. Provide A.A. literature describing the A.A. program of recovery.
e. Stress A.A.'s eagerness to serve as a community resource to help the alcoholic recover from the illness of alcoholism.

4. Q. Why is C.P.C. activity important?

A. The professional can help the alcoholic *want* to hear the A.A. message of recovery – by education, counseling, and rehabilitative treatment – and can also be of aid through making the community become aware of and care about the millions still suffering from the deadly disease that A.A. has helped us to arrest.

With increasing activity in the alcoholism field and with more people becoming involved in it, some of them having little or no understanding of A.A., open communication in a spirit of friendly cooperation is more important than ever. There *will* be misunderstandings, but they need not divert us from our intention of cooperating with others in the field of alcoholism – being mindful of our Tradition of nonaffiliation, and also mindful that the *only* inventory we take is our own.

5. Q. Is there additional information about C.P.C. committees?

A. Additional information (such as Guidelines and pamphlets) may be obtained by writing to the mail address on the inside front cover.

THE TWELVE TRADITIONS OF ALCOHOLICS ANONYMOUS

1 – Our common welfare should come first; personal recovery depends upon A.A. unity.

2 – For our group purpose there is but one ultimate authority – a loving God as He may express Himself in our group conscience. Our leaders are but trusted servants; they do not govern.

3 – The only requirement for A.A. membership is a desire to stop drinking.

4 – Each group should be autonomous except in matters affecting other groups or A.A. as a whole.

5 – Each group has but one primary purpose – to carry its message to the alcoholic who still suffers.

6 – An A.A. group ought never endorse, finance or lend the A.A. name to any related facility or outside enterprise, lest problems of money, property and prestige divert us from our primary purpose.

7 – Every A.A. group ought to be fully self-supporting, declining outside contributions.

8 – Alcoholics Anonymous should remain forever nonprofessional, but our service centers may employ special workers.

9 – A.A., as such, ought never be organized; but we may create service boards or committees directly responsible to those they serve.

10 – Alcoholics Anonymous has no opinion on outside issues; hence the A.A. name ought never be drawn into public controversy.

11 – Our public relations policy is based on attraction rather than promotion; we need always maintain personal anonymity at the level of press, radio and films.

12 – Anonymity is the spiritual foundation of all our Traditions, ever reminding us to place principles before personalities.

A.A. Publications
That Aid Cooperation

Books:

Alcoholics Anonymous
Twelve Steps and Twelve Traditions
A.A. Comes Of Age

Pamphlets:

The A.A. Member
A.A. Tradition – How It Developed
The A.A. Service Manual
The Twelve Traditions Illustrated
A Clergyman Asks About Alcoholics Anonymous
A.A. In Prisons
A.A. In Treatment Centers
If You Are A Professional...A.A. Wants To Work With You
Speaking At Non-A.A. Meetings
A Member's Eye View Of Alcoholics Anonymous
Let's Be Friendly With Our Friends
Three Talks To Medical Societies By Bill W.
Alcoholics Anonymous And The Medical Profession
This Is A.A.
Memo To An Inmate
Understanding Anonymity
It Sure Beats Sitting In A Cell
Time To Start Living

(Above is pamphlet for the older alcoholic, also available in large print.)

Guidelines:

Armed Services
Central Or Intergroup Offices
Clubs

Conferences, Conventions, And Area Or Regional A.A. Get-Togethers
Cooperating With Court, A.S.A.P. (Alcohol Safety Action Project), And Similar Programs
Institutions Committees
Relationship Between A.A. And Al-Anon
On Occupational Programs
Current Use Of The A.A. Directories
Public Information
For A.A. Members Employed In The Alcoholism Field
Forming Local Committees on Cooperation With The Professional Community
A.A. Answering Services

Monthly Magazine: The A.A. Grapevine
Address: P.O. Box 1980, Grand Central Station
New York, NY 10163

Newsletter: About A.A.

APPENDIX J—Nakken, "Keep It Simple"

KEEP IT SIMPLE

STEP
2

Jane Nakken

BRONX MUNICIPAL HOSPITAL CENTER
Comprehensive Alcoholism Treatment
Center
OUTPATIENT DEPARTMENT

®HAZELDEN®

STEP TWO
Keep It Simple Series

by
Jane Nakken

®HAZELDEN®

INTRODUCTION

We have come to understand we are chemically dependent. For most of us, this is a time that is both wonderful and terrible.

It is terrible because we have looked hard at the pain in our insides and at the mess our lives are in. We feel sad, sick, and sorry about what has happened to us. We may feel guilty for the trouble our behavior has caused others. We also know we have more thinking to do about our pain and our healing.

But it is also wonderful, because now we know *why* it happened. It happened because we have a disease that is more powerful than we are. *It's not our fault.* How often had we told people this when we were using? But now it's not just an excuse that feels strangely true. We have admitted and started to accept this as the truth.

If our chemical dependency is more powerful than we are, how can we possibly stay sober? We have admitted we can't control our chemical use or its effects on our lives, so how can we recover?

The answer suggested by Alcoholics Anonymous (A.A.) and Narcotics Anonymous (N.A.) is simple: find someone or something that can help us. Everyone who has a serious disease needs help—even doctors go to other doctors. There is help available for us just as there is help for people with other diseases. We are responsible for finding the best help to recover from our chemical dependency.

Step Two is: *Came to believe that a Power greater than ourselves could restore us to sanity.*

PART ONE
WHY DO WE NEED STEP TWO?

In taking Step One, we realized we have a scary disease and it has control over us. We know we are in trouble and we need help. Everyone needs help to recover from diseases and we do too. But regular doctors can't cure us because our disease affects our mind, body and spirit. We need a special kind of help.

Addiction is a lonely disease. It separates us from other people by turning us inward. We think only about our wants and our chemicals. As using alcoholics or addicts, we couldn't really trust or love anyone. We didn't let others get to know and love us. Step Two means we don't have to be alone anymore.

Step Two asks us to think about where we can get help we need. We each make a choice, based on who we are and what we believe, but A.A. suggests we look for spiritual help. This pamphlet is a tool for us to use in thinking about finding a Higher Power. This Higher Power can support us in our recovery from chemical dependency.

Our First Reactions

Most of took one look at Step Two and said something like, "I knew this must be the wrong program for me, and this proves it. It's a program for crazy people. I don't need to be restored to sanity. I'm not insane!"

Then we thought about Step One and decided, "Well, maybe I'm just a little insane—but only when I'm using chemicals!" Then we remembered we haven't been able to stop using and stay straight. Some of us looked up *sanity* and found it meant *soundness of mind, soundness of judgment, or healthy balance.* We looked over the examples we wrote down when we were working our First Step, and they proved we need some sanity in our lives.

What about *soundness of mind?* All of us have had times when our minds weren't working right. Just being high is an example. Other things that happen when our minds aren't working normally include blackouts, paranoia, hallucinations, and loss of memory.

Blackouts are not normal. A blackout is loss of memory about our actions during a period of time. We don't remember blackouts. We usually figure out we had them because things don't add up to us. We may not remember how we got from one place to another. We may forget what happened at a party even though we were there. Or we may forget where we left the car.

List some of the times you have had blackouts:

1.

2.

3.

Paranoia can be caused by heavy use of some chemicals. When we are paranoid, we are uneasy and afraid others are watching us or planning to hurt us. We might avoid crowds or we sit with our back to the wall in public places. We may even begin to carry weapons.
List examples of any paranoid thoughts or behavior you have had in your past:

1.

2.

Our minds are not working normally when we have *hallucinations* from using chemicals. A hallucination is when we see, hear, or feel something that is not there. Some of us have seen bugs crawling on us, while others have seen people's faces melt. We can have hallucinations when we are high or when we are sobering up. Using chemicals is not the only cause of hallucinations, but most hallucinations are caused by chemicals.
List hallucinations you have had caused by alcohol or other drug use or withdrawal:

1.

2.

One last test of soundness of mind is how well we are able to remember and learn new things. Most of us found we had problems concentrating on our work while we were using. We became less interested in reading because we couldn't remember what we read.
What are things that happened to you because of *poor memory?*

1.

2.

When our chemical use caused blackouts, paranoia, poor memory, or hallucinations, it affected our soundness of mind. How about *soundness of judgment? Sanity* means sound judgment. We were certainly missing that while we were using. We found chemicals making choices for us. Many of our choices were dangerous or hurtful. Because of our bad judgment, we may have hurt or lost good friends. We may have dropped activities we liked, quit jobs, or gotten fired. We may have put ourselves or others in danger.

List things you did as a result of your chemical dependency that show you didn't have *sound judgment.*

1.

2.

3.

4.

The last meaning for *sanity* is *healthy balance.* It means living in a way that helps us grow and mature. Chemically dependent people who are still using aren't in healthy balance. Getting high takes more time, energy, money, and love than anything else in our life. We lose other interests, goals, and relationships. We become obsessed with feeding our addiction. We call this *craving* or *compulsion.* For many of us in recovery, this is the clearest sign of the insanity of our disease.

Through Step Two, we believe we will be returned to sanity. We believe our craving will be removed. For some, this seems

to happen early in recovery. For most of us, urges to use chemicals go away more slowly. What are some ways your life got out of balance because of using?
List some of the interests, goals, and relationships you gave up:

1.

2.

3.

4.

5.

After thinking about it, we can clearly see we were not sane while we were using.

The most amazing thing is this: We did the most insane thing over and over while we were straight. We took that first drink or other drug knowing (and denying) it meant trouble. We couldn't control our chemical use no matter how many times we tried. Some of us gave up trying. We could not restore ourselves to sanity.

But, for each of us, Step Two changed the hopeless craziness and helped us to begin recovering. *We came to believe that a Power greater than ourselves could restore us to sanity.*

PART TWO

Came to believe . . . .

Step Two says understanding this Step. takes a while. It says, "Came to believe", not "All of a sudden I knew." We can't make it happen. We can help it happen, though. We can do this by

thinking about it and remembering how it was when we had faith in something. We can also recall where we have gotten our help and support.

Step Two turns off some of us because it sounds religious. We may be afraid the A.A. program says we have to believe in God. We may not believe in God. Or we may think God doesn't have much to do with our lives. Maybe we don't trust God. We may think we're in trouble with God because we aren't perfect.

Perhaps we have other spiritual beliefs or no beliefs at all, and we don't want to be brainwashed.

Relax. You don't have to believe in God, Buddha, or the Great Spirit. Step Two suggests we find something to believe in that can help us recover.

Spirituality

The recovery program suggested in A.A. is called a *spiritual* program. Spirituality is not the same thing as religion. *Spiritual* has to do with *our spirit.*

We each have a spirit. Our spirit is the invisible part of us that gives us life and energy. When someone is depressed, we say their spirits are low. When a person has died, we say their spirit has left them. When we are really happy, we say we are in high spirits. One reason we used chemicals was to get that high to make us happy. Our spirit makes each of us different and special. Our feelings, beliefs, and moods come from our spirit. What parts of your spirit do you already know?

What is your favorite color?

What is your favorite story?

Who do you look up to the most?

What is your favorite season of the year?

Where is your favorite place?

Do you have a good sense of humor?

Are you a serious person?

Are you quiet or do you talk a lot?

How do you feel most of the time?

What makes you sad?

1.

2.

What makes you happy?

1.

2.

3.

Who are your best friends?

1.

2.

3.

Spirituality means the ways we help our spirit be alive and happy. We all have spiritual things we do. Some work, some don't. We may have used alcohol and other drugs to make our spirit feel better. Instead, our spirits got sick and tired.
What spiritual things do you do?

1.

2.

Have you ever been to a place that made your spirit feel joy, peace, or awe? Where was that?
What special people in your life bring good feelings when you are with them or think about them?

1.

2.

3.

4.

What special things do you do alone or with other people that make your spirit feel alive and happy?

1.

2.

3.

We say the Twelve Step program is a *spiritual* program, because it helps us learn ways to take care of our spirit. Step Two asks us

to begin by coming to believe in a Higher Power who can heal our spirit.

PART THREE
FINDING OUR OWN HIGHER POWER

How can we choose a Power greater than ourselves to restore us to sanity? The same way we choose someone to help us with any serious problem. We want someone who knows what needs to be done and how to do it. We want to choose someone who is strong enough to do it and cares about us enough to put a lot of work into us. We need a Higher Power we can trust with our life. Let's look at our needs one at a time.

We want a Higher Power who knows all about chemical dependency and recovery. We want a Higher Power who knows as much as possible about us. This it what we mean by a Power who is *Higher.* When it comes to what we need, we are going to the expert.

List some persons or things that know about chemical dependency, recovery, and you:

1.

2.

3.

4.

5.

6.

7.

We can probably think of a number of persons or things that fit on the list above. Maybe one of them is the right Higher Power for us, or even more than one. Which ones work best for us at this time? When we need other kinds of expert help, we ask for it from people who have gotten good help. That is a good idea now, before we choose a Higher Power for our recovery program.

Think of five recovering people who seem to be getting healthy. Ask them what they believe in as a Higher Power and how it works for them.

List their answers:

1.

2.

3.

4.

5.

Besides smart, our Higher Power must be *powerful.* It can restore us to sanity. We have already asked others how their Higher Power works for them. Think of how a Higher Power could work for you.

List the Higher Powers you think might work and write how that Higher Power could help you recovery.

1.

2.

3.

4.

Once you've found a Higher Power you believe is smart enough and strong enough to restore you to sanity, you can ask yourself, *will it care enough about me* to restore me to sanity? Can I trust it to be there when I need help? Will it give up on me or hang in there when the going gets rough? How do I know?

When something sad happens will I hang in there with my Higher Power to help with the pain? Or will I get mad and give up on my Higher Power the first time something bad happens?

We many not know the answers to all these questions right now if we are at the start of a relationship with our Higher Power. It may take us some time to *come to believe* fully.

All of us need a Higher Power who doesn't expect us to be perfect. It helps if our Higher Power is caring and has a good sense of humor. It also helps if our Higher Power has lots of understanding and forgiveness. Are you ready to choose a Higher Power who you believe can restore you to sanity?
Write a little about your Higher Power:

If your are unsure about the best Higher Power for you or if it can help, you can act as *if.* Pick the Higher Power that makes the most sense to you and act as if you believe in it. If your group is your Higher Power, do as they say even if you're not sure it will work.

If you think there is a Power who can help but you're not sure, you could pray. Your prayer can be: "God, if you really exist, and if you care about me, please help me stay sober today and heal my spirit." Then listen and watch for answers, and act as if they will work. Depending on what Higher Power we find most helpful, our answers and help come in many ways.

One way our Higher Power often works is through other people. That is what happened to one man:

> There is a story about a man whose home was in a path of a flood. As he stood on his front steps with water rising

around him, a rescue squad came by in a boat. "Get in, we'll save you," they said, "Thanks anyway," said the man, "but my Higher Power is going to save me." The boat went by.

The next day, as the man sat in his second story window, with water rising around his feet, another boat came by. "Come on, get in!" said the rescue team. "No thanks. My Higher Power is going to save me," said the man.

On the third day, as the man sat on his chimney dangling his toes in the water, a third rescue boat came to save the man. He still refused to get in the boat.

The man drowned.

In the afterlife, he met his Higher Power. He was a little angry, and said to his Higher Power, "I had faith in you and you let me down. For three days, I sat in a flood, waiting for you to save me. And look what I get from you! I'm dead!"

His Higher Power looked sadly at the man, shook his head, and said," I wanted you to live, too! I sent three boats to save you, but you wouldn't accept my help."

A Final Thought . . .

Restore us to sanity means to return us to the sanity we used to have. Most of us were more or less sane before chemical dependency took over our lives. We may have been much younger than we are now. We know we don't mature much when we spend our life chasing a high. We have some catching up to do on the growing we missed. That's normal. Go easy and ask for help. Remember, being restored to our past sanity is a good start. We will catch up mentally, emotionally, and spiritually as we work our Twelve Step program.

We know we can't do it alone. Step Two means we have all the help we need. Recovery won't be easy, and we won't be perfect. We know we can learn to live sober, because *We came to believe that a Power greater than ourselves could restore us to sanity.*

THE TWELVE STEPS OF ALCOHOLICS ANONYMOUS

This pamphlet is one person's interpretation of part of Alcoholics Anonymous' Twelve Step program. The Twelve Steps to recovery are as follows:

1. We admitted we were powerless over alcohol—that our lives had become unmanageable.
2. Came to believe that a Power greater than ourselves could restore us to sanity.
3. Made a decision to turn our will and our lives over to the care of God *as we understood Him.*
4. Made a searching and fearless moral inventory of ourselves.
5. Admitted to God, to ourselves, and to another human being the exact nature of our wrongs.
6. Were entirely ready to have God remove all these defects of character.
7. Humbly asked Him to remove our shortcomings.
8. Made a list of all persons we had harmed, and became willing to make amends to them all.
9. Made direct amends to such people wherever possible, except when to do so would injure them or others.
10. Continued to take personal inventory and when we were wrong promptly admitted it.
11. Sought through prayer and meditation to improve our conscious contact with God as *we understood Him,* praying only for knowledge of His will for us and the power to carry that out.

12. Having had a spiritual awakening as the result of these steps, we tried to carry this message to alcoholics, and to practice these principles in all our affairs. *

LEARNING AND LIVING THE TWELVE STEPS

Twelve Step Pamphlets—Steps One through Twelve
The power of the Twelve Steps can be astonishing, Fortunately, learning about them can be easy. These pamphlets help you grasp a working knowledge of each Step and begin the learning process.
Step One: The Foundation of Recovery
Order No. 1425
Step Two: Coming to Believe
Order No. 1273
Step Three: Making a Decision
Order No. 1277
Step Four: Getting Honest
Order No. 1286
Step Five: Telling My Story
Order No. 1281
Steps Six & Seven: Ready, Willing & Able
Order No. 1287
Step Eight: Preparing for Change
Order No. 1288
Step Nine: Repairing the Past
Order No. 1289
Step Ten: Maintaining My New Life
Order No. 1294
Step Eleven: Partnership with a Higher Power

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*The Twelve Steps are taken from *Alcoholics Anonymous* (Third Edition), published by A.A. Worlds Services, Inc., New York, NY, pp 59-60. Reprinted with permission.

Order No. 1431
Step Twelve: Carrying the Message
Order No. 1301

After reading each pamphlet, it's important to translate that information to fit your life. One way to start is to learn through the experiences of other people with . . .

The Foundation of Recovery Videos—Denial, and Steps One through Four
One-on-one interviews with recovering people uncover common obstacles they faced—and overcame—with each Step. From denial and powerlessness to a willingness to surrender, you'll gain an in-depth understanding of issues specific to the first four Steps and the impact denial can have on your recovery. Videos can help you realize you're not alone, and that others have experienced many of the same feelings.

Chemical Dependency: A Disease of Denial
Order No. 5854
Step One: The Foundation of Recovery
Order No. 5832
Step Two: Finding Your Solution
Order No. 5830
Step Three: Making Your Decision
Order No. 5831
Step Four: Getting Honest
Order No. 5833

Now, you can apply what you've seen in the videos to your life with . . .

Keep It Simple Workbooks—Steps One through Five
Workbooks are excellent materials to truly see and "document" your recovery progress. When you write something out, you make a specific commitment to change and to take action. And in recovery, being specific and taking action helps you achieve your goals and maintain sobriety. Workbooks enable you to "read the past" and take pride in your accomplishments.

Step One
Order No. 5380
Step Two
Order No. 5381
Step Three
Order No. 5382
Step Four
Order No. 5383
Step Five
Order No. 5384

Pamphlets, videos, workbooks. When you combine these three formats, you create the most effective learning process possible. And a strong, stable foundation that can help you sustain lifelong recovery.
For more information on any of these titles, please call one of our representatives at 1-800-328-9000.
®HAZELDEN®
Pleasant Valley Road
P.O. Box 176
Center City, MN 55012-0176
1-800-328-9000 U.S., Canada,
and the Virgin Islands

1-612-257-4010 Outside the U.S. and Canada
1-612-257-1331 FAX
Hazelden Europe
P.O. Box 616
Cork, Ireland
Phone: 011+353+21+314318
FAX: 011+353+21+961269
Order 5381

APPENDIX K—Alcoholism Counseling: Care Curriculum Trainer's Manual

ALCOHOLISM COUNSELING: CORE CURRICULUM

Trainer's Manual

New York State Division of Alcoholism and Alcohol Abuse
Bureau of Professional Development

This publication was completed in partial fulfillment of a contract with the New York State Department of Social Services. Funding was made available by the United States Department of Health and Human Services under Title XX of the Social Security Act.

SEAL
Mario M. Cuomo, Governor

daaa
Robert V. Shear, Director

Robert V. Shear
Director A16

STATE OF NEW YORK
DIVISION OF ALCOHOLSIM AND ALCOHOL ABUSE
194 WASHINGTON AVENUE
ALBANY, NEW YORK 12210

Dear Colleague:

"The Alcoholism Counseling: Core Curriculum" manual you have received is a product of training which the Division of Alcoholism and Alcohol Abuse has provided. Increasingly, the Division has concentrated its resources in developing curricula, instructional materials, and manuals which can be used by alcoholism professionals in the field. In this way, limited training resources can be multiplied and adapted for different settings.

We hope that the use of this manual will allow more workers new to the alcoholism field or working with alcoholic clients, to gain a solid grounding in alcoholism counseling. The manual is designed in a way that trainers can add to and update bibliographies as well as include new research findings applicable to the clinical setting. While there is core material, it can be expanded. The Bureau of Professional Development will be providing periodic updates to the manual.

In using the manual, you will find that cues have been given to the trainer when s/he will be dealing with material that is sensitive because of the pervasive nature of alcoholism and the emotional impact it can have on family members, friends or colleagues that may be your trainees. We hope this approach will be useful.

We wish you success in the use of the manual. It is our particular hope that your effort will be important in producing professionals better educated about alcoholism, thereby improv-

ing the quality of services they deliver to alcoholic persons and their families.

Sincerely,

s/Robert V. Shear
Robert V. Shear
Director

ALCOHOLISM
COUNSELING

NEW YORK STATE
Division of Alcoholism
and Alcohol Abuse

trainer section 10

core
curriculum

BUREAU OF PROFESSIONAL
DEVELOPMENT

TRAINING

(FROM TRAINEE PAGES 11 AND 12)

From "Reality Therapy and A.A.: A Comparison of Two Approaches to Behavior Change", L. McElroen and G. Faltico, *Journal of Corrective and Social Psychiatry* 1976. (used with permission of Larry McElroen.)

SOME SIMILARITIES BETWEEN A.A.'s 12 STEPS AND REALITY THERAPY

Some similarities between A.A. and Reality Therapy include involvement, sharing and caring, a "don't give up attitude". Behavior change is stressed rather than feeling change. The concern of both therapies is in the "now".

A.A.	Reality Therapy
Step 1 - We admitted we were powerless over alcohol, that our lives had become unmanageable.	Person acknowledges the reality of his or her behavior, the admission of failure.
Step 2 - Came to believe that a Power greater than ourselves could restore us to sanity.	Reliance on a therapist, but stresses s/he has the power within self to grow and change.
Step 3 - Made a decision to turn our will and our lives over to the care of God as we understood Him.	The person turning to Reality Therapy opens the door of "willingness", therefore, casts out his/her ideas, turning to a therapist.
Step 4 - Made a searching and fearless moral inventory of ourselves.	Encourages a belief in self-evaluation, a person can transcend previous self-destructive behavior and become more self-actualized.
Step 5 - Admitted to God, to ourselves, and to another human being the exact nature of our wrongs.	The humility of group confession and feedback is emphasized by many Reality therapists. Also, involvement

	between therapist and client is encouraged to enable the individual to discuss his/her problems. (Religion is by no means the sole advocate of this saving principle.)
Step 6 - Were entirely ready to have God remove all these defects of character.	Motivation and readiness are essential for change. A person must be ready to face reality. (Reality Therapy puts more emphasis on self than God.)
Step 7 - Humbly asked Him to remove our shortcomings.	Humility is emphasized in Reality Therapy. As confrontation and peer criticism are used to tighten up client's awareness of his/her weakness and strengths in his reality.
Step 8 - Made a list of all persons we had harmed, and became willing to make amends to them all. Step 9 - Made direct amends to such people wherever possible, except when to do so would injure them or others.	Personal relationships are the focus of Steps 8 and 9 and in Reality Therapy the development of a sense of responsibility is the primary function of the Reality therapist. a) A plan is written in Reality Therapy. b) The plan is carried out.
Step 10 - Continued to take personal inventory and when	Emphasis on present behavior, taking responsibility and a

we were wrong promptly admitted it.	constant evaluation of how one is behaving today. Attempt to improve behavior is stressed.
Step 11 - Sought through prayer and meditation to improve our conscious contact with God as we understood Him, praying only for knowledge of His will for us and the power to carry it out.	Continued self-evaluation in Glasser's latest work entitled "Positive Addiction." He speaks of meditation, jogging and other repetitive activities as a method to acquire strength in coping with life's problems.
Step 12 -Having had a spiritual awakening as the result of these steps, we tried to carry this message to alcoholics, and to practice these principles in all our affairs.	Glasser talks about "involvement" and the "psycho-therapist" as a friend. Both A.A. and Reality Therapy have discovered the value of peer self help concepts in producing behavior change. Key component in both approaches is involvement of the healthy person.

In addition, Reality Therapy and the 12 Steps of AA are similar in stressing affirmative behavior, whether it is according to the contract that is agreed upon by the therapist and the client in Reality Therapy, or whether it is guided by self-motivation as in A.A.

No. 96-372

Supreme Court, U.S.
FILED
NOV 26 1996

IN THE

Supreme Court of the United States

October Term, 1996

THOMAS A. COUGHLIN, III, Commissioner, N.Y.S. Department of Correctional Services; LOUIS F. MANN, Superintendent, Shawangunk Correctional Facility,

Petitioners,

against

DAVID GRIFFIN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

May the State coerce participation in the religious exercises propounded by the Twelve Steps of Alcoholics Anonymous?

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BRIEF IN OPPOSITION TO THE PETITION

SUMMARY OF THE ARGUMENT

In its Opinion rendered June 11, 1996, the New York Court of Appeals held that "under the Establishment Clause of the United States Constitution's First Amendment, an atheist or agnostic inmate may not be deprived of eligibility for expanded family visitation privileges for refusing to participate in the sole alcohol and drug addiction program at his State correctional facility when the program necessarily entails mandatory attendance at and participation in a curriculum which adopts in major part the religious-oriented practices and precepts of Alcoholics Anonymous (hereinafter A.A.)" Petitioners' Appendix, page 3a.

The New York Court of Appeals held that the "essential major components, indeed, the heart" of the State prison program at issue was the "A.A. Twelve Step[1] manifesto itself

---

[1]"The Twelve Steps Of Alcoholics Anonymous" reads as follows:

1. We admitted we were powerless over alcohol—that our lives had become unmanageable.

2. Came to believe that a power greater than ourselves could restore us to sanity.

3. Made a decision to turn our will and our lives over to the care of God *as we understood Him.*

4. Made a searching and fearless moral inventory of ourselves.

5. Admitted to God, to ourselves and to another human being the exact nature of our wrongs.

6. Were entirely ready to have God remove all these defects of character.

7. Humbly asked Him to remove all of our shortcomings.

8. Made a list of all persons we had harmed, and became willing to make amends to them all.

(continued...)

and inmate participation in the group sessions conducted by A.A. and N.A. volunteers utilizing the A.A. *modus operandi*." Petitioner's Appendix, pages 8a-9a. The Court below then held that "a fair reading of the fundamental A.A. doctrinal writings discloses that their dominant theme is unequivocally religious . . .[and] reflect[s] the traditional elements common to most theistic religions." Petitioner's Appendix, page 9a. The Court below continued, "beyond peradventure that doctrinally and as actually practiced in the 12-step methodology, adherence to the A.A. fellowship entails engagement in religious activity and religious proselytization." Petitioner's Appendix, pages 11a-12a. The Court below had no trouble concluding that the use of the A.A. Twelve Step program by New York's prison system "as an essential component of an exclusive, compulsory attendance . . . [p]rogram violates the Establishment Clause." Petitioner's Appendix, page 16a.

(...continued)

8. Made a list of all persons we had harmed, and became willing to make amends to them all.

9. Made direct amends to such people wherever possible, except when to do so would injure them or others.

10. Continued to take personal inventory and when we were wrong promptly admitted it.

11. Sought through prayer and meditation to improve our conscious contact with God, *as we understood Him*, praying only for knowledge of His will for us and the power to carry that out.

12. Having had a spiritual awakening as a result of these steps, we tried to carry this message to alcoholics, and to practice these principles in all our affairs.

(emphasis in original).

Petitioners, however, want this Court to disregard fundamental Establishment Clause jurisprudence in order to save New York State's penology of religious indoctrination. They are asking this Court to approve a new civic religion[2] of secular spiritualism which demands recognition and acceptance of a distinction between religious belief in "God", on the one hand, and secular belief in a spiritual "Higher Power" expressed in traditional religious terms, on the other.[3] Petitioners are essentially arguing that so long as the State (or its adjunct, such as A.A.) disclaims affiliation with any religion and insists that the word "God" can mean anything one wants it to mean, the State is free to exhort its citizens—using traditionally religious language—to hand their wills over to a spiritual Higher Power, to acknowledge that they are otherwise powerless, and to pray every day for the rest of their lives.

STATEMENT OF FACTS

Respondent, a prisoner who has declared himself an agnostic or atheist since 1959, brought this proceeding to be relieved from the requirement that he attend New York State's Department of Correctional Services' (DOCS) Alcohol and Substance Abuse Treatment (ASAT) program as a condition of his participation in the State prisons' Family Reunion Program. Respondent claimed that DOCS' requirement that he attend a

---

[2]See, *Lee v Weisman,* 120 L.Ed.2d 467, 482-83 (1992) where Justice Kennedy, writing for the majority, stated that "[t]he suggestion that government may establish an official or civic religion as a means of avoiding the establishment of a religion with more specific creeds strikes us as a contradiction that cannot be accepted."

[3]This is so even though DOCS admitted in the courts below that references are made to God when they are "necessary to explain the Higher Power concept." (Petitioner's Appendix, page 89a)

treatment program based upon the religious Twelve Steps of Alcoholics Anonymous violates the Establishment Clause of the First Amendment to the United States Constitution.

It is not disputed that: (1) participation in the ASAT program was a prerequisite to respondent's participation in the Family Reunion Program, (2) the entire ASAT curriculum was based upon the Twelve Steps of Alcoholics Anonymous which is spiritual in nature, (3) as of June, 1993, the ASAT program provided treatment services in 62 New York State correctional facilities and 11,480 inmates were in treatment, and (4) DOCS did not provide any secular alternative to the ASAT Twelve Step program—ASAT was DOCS' exclusive addiction program throughout the State's prison system.

The religiously indoctrinating nature of the Twelve Step program is explained in the two basic Alcoholics Anonymous publications, *Twelve Steps and Twelve Traditions*, and *Alcoholics Anonymous*, commonly referred to as the "Big Book". Although neither of these publications was included in the trial court's record, *petitioners*, in their opposing briefs to New York's Appellate Division and Court of Appeals, acknowledged both of these books as authoritative by explicitly utilizing excerpts from them in their arguments. Petitioners continue to acknowledge the authority of these texts by relying upon them in their petition to this Court. Petition, pages 12, 13, 14.

Twelve Steps and Twelve Traditions ("TSTT") "presents an explicit view of the principles by which A.A. members recover and by which their Society functions." (Preface TSTT 15) "It is hoped," write the authors, "that this volume will afford all who read it a close-up view of the principles and forces which have made Alcoholics Anonymous what it is." (Preface TSTT 18) The book elaborates, chapter by chapter, upon each of the

Twelve Steps. The following are some of the statements contained in these chapters:

> Some of us won't believe in God, others can't, and still others who do believe that God exists have no faith whatever He will perform this miracle [of removing our obsession] . . . Let's look first at the case of the one who says he won't believe—the belligerent one. He is in a state of mind which can be described only as savage. (Step Two TSTT 25)

> Whether agnostic, atheist, or former believer, we can stand together on . . . Step [Two]. True humility and an open mind can lead us to faith, and every A.A. meeting is an assurance that God will restore us to sanity if we rightly relate ourselves to Him. (Step Two TSTT 33)

> Like all the remaining Steps, Step Three calls for affirmative action, for it is only by action that we can cut away the self-will which has always blocked the entry of God—or, if you like, a Higher Power—into our lives. Faith, to be sure, is necessary, but faith alone can avail nothing. We can have faith, yet keep God out of our lives. Therefore our problem now becomes just how and by what specific means shall we be able to let Him in? Step Three represents our first attempt to do this. In fact, the effectiveness of the whole A.A. program will rest upon how well and earnestly we have tried to come to a 'decision to turn our will and our lives to the care of God *as we understood Him*.' (Step Three TSTT 34-35)

> All of the Twelve Steps require sustained and personal exertion to conform to their principles and so, we trust, to God's will. (Step Three TSTT 40)

It is when we try to make our will conform with God's that we begin to use it rightly. To all of us, this was a most wonderful revelation. Our whole trouble had been the misuse of willpower. We had tried to bombard our problems with it instead of attempting to bring it into agreement with God's intention for us. To make this increasingly possible is the purpose of A.A.'s Twelve Steps, and Step Three opens the door. (Step Three TSTT 40) Step Five is 'the beginning of a true kinship with man and God.' (Step Five TSTT 57)

Many an A.A., once agnostic or atheistic, tells us that it was during this stage of Step Five that he first actually felt the presence of God. And even those who had faith already often become conscious of God as they never were before. (Step Five TSTT 62)

This feeling of being at one with God and man, this emerging from isolation through the open and honest sharing of our terrible burden of guilt, brings us to a resting place where we may prepare ourselves for the following Steps toward a full and meaningful sobriety. Step Five TSTT 62)

Of course, the often disputed question of whether God can—and will, under certain conditions—remove defects of character will be answered with a prompt affirmative by almost any A.A. member. To him, this proposition will be no theory at all; it will be just about the largest fact in his life. (Step Six TSTT 63)

[I]n a very complete and literal way, all A.A.'s have 'become entirely ready' to have God remove the mania

for alcohol from their lives. And God has proceeded to do exactly that. (Step Six TSTT 64)

If we ask, God will certainly forgive our derelictions. (Step Six TSTT 65)

So Step Six—'Were entirely ready to have God remove all these defects of character'—is A.A.'s way of stating the best possible attitude one can take in order to make a beginning on this lifetime job. (Step Six TSTT 65)

No matter how far we have progressed, desires will always be found which oppose the grace of God. (Step Six TSTT 66)

[T]he difference between 'the boys and the men' is the difference between striving for a self-determined objective and for the perfect objective which is of God. (Step Six TSTT 68)

The moment we say, 'No, never!' our minds close against the grace of God. Delay is dangerous, and rebellion may be fatal. This is the exact point at which we abandon limited objectives, and move toward God's will for us. (Step Six TSTT 69)

For just so long as we were convinced that we could live exclusively by our own individual strength and intelligence, for just that long was a working faith in a Higher Power impossible. This was true even when we believed that God existed. We could actually have earnest religious beliefs which remained barren because we were still trying to play God ourselves. As long as we placed self-reliance first, a genuine reliance upon a Higher

Power was out of the question. That basic ingredient of all humility, a desire to seek and do God's will, was missing. (Step Seven TSTT 73)

Refusing to place God first, we had deprived ourselves of His help. But now the words 'Of myself I am nothing, the Father doeth the works' began to carry bright promise and meaning. (Step Seven TSTT 75)

The Seventh Step is where we make the change in our attitude which permits us, with humility as our guide, to move out from ourselves toward others and toward God. (Step Seven TSTT 76)

Whenever our pencil falters, we can fortify and cheer ourselves by remembering what A.A. experience in this Step has meant to others. It is the beginning of the end of isolation from our fellows and from God. (Step Eight TSTT 82)

As an insurance against 'big-shot-ism' we can often check ourselves by remembering that we are today sober only by the grace of God and that any success we may be having is far more His success than ours. (Step Ten TSTT 92)

Prayer and meditation are our principal means of conscious contact with God. (Step Eleven TSTT 96)

It has been well said that 'almost the only scoffers at prayer are those who never tried it enough.' (Step Eleven TSTT 97)

We all need the light of God's reality, the nourishment of His strength, and the atmosphere of His grace. To an amazing extent the facts of A.A. life confirm this ageless truth. (Step Eleven TSTT 98)

Now and then we may be granted a glimpse of that ultimate reality which is God's kingdom. And we will be comforted and assured that our own destiny in that realm will be secure for so long as we try, however falteringly, to find and do the will of our own Creator. (Step Eleven TSTT 98)

The object of meditation "is always the same: to improve our conscious contact with God, with His grace, wisdom, and love." (Step Eleven TSTT 100)

Now what of prayer? Prayer is the raising of the heart and mind to God—and in this sense it includes meditation. How may we go about it? And how does it fit in with meditation? Prayer, as commonly understood, is a petition to God. Having opened our channel as best we can, we try to ask for those right things of which we and others are in the greatest need. And we think that the whole range of our needs is well defined by that part of Step Eleven which says: '. . . knowledge of His will for us and the power to carry that out.' A request for this fits in any part of our day. (Step Eleven TSTT 102)

. . . when making specific requests, it will be well to add to each one of them this qualification: '. . . if it be Thy will.' We ask simply that throughout the day God place in us the best understanding of His will that we can have for that day, and that we be given the grace by which we may carry it out. (Step Eleven TSTT 102)

In A.A. we have found that the actual good results of prayer are beyond question. They are matters of knowledge and experience . . . Almost any experienced A.A. will tell how his affairs have taken remarkable and unexpected turns for the better as he tried to improve his conscious contact with God . . . All of us, without exception, pass through times when we can pray only with the greatest exertion of will. Occasionally we go even further than this. We are seized with a rebellion so sickening that we simply won't pray. When these things happen we should not think too ill of ourselves. We should simply resume prayer as soon as we can, doing what we know to be good for us. (Step Eleven TSTT 104-105)

We know that God lovingly watches over us. We know that when we turn to Him, all will be well with us, here and hereafter. (Step Eleven TSTT 105)

Reviewing the first eleven Steps it is observed that "in Step Three we turned our will and our lives over to the care of God as we understood Him. For the time being, we who were atheist or agnostic discovered that our own group, or A.A. as a whole, would suffice as a higher power. . . [P]racticing these Steps, we had a spiritual awakening about which finally there was no question. Looking at those who were only beginning and still doubted themselves, the rest of us were able to see the change setting in. From great numbers of such experiences, we could predict that the doubter who still claimed that he hadn't got the 'spiritual angle,' and who still considered his well-loved A.A. group the higher power, would presently love God and call Him by name. (Step Twelve TSTT 107-109)

Practically every A.A. member declares that no satisfaction has been deeper and no joy greater than in a Twelfth Step job well done. To watch the eyes of men and women open with wonder as they move from darkness into light, to see their lives quickly fill with new purpose and meaning, to see whole families reassembled, to see the alcoholic outcast received back into his community in full citizenship, and above all to watch these people awaken to the presence of a loving God in their lives —these things are the substance of what we receive as we carry A.A.'s message to the next alcoholic. (Step Twelve TSTT 110)

When we developed still more, we discovered the best possible source of emotional stability to be God himself. We found that dependence upon His perfect justice, forgiveness, and love was healthy, and that it would work where nothing else would. (Step Twelve TSTT 116)

Service, gladly rendered, obligations squarely met, troubles well accepted or solved with God's help, the knowledge that at home or in the world outside we are partners in a common effort, the well-understood fact that in God's sight all human beings are important, the proof that love freely given surely brings a full return, the certainty that we are no longer isolated and alone in self-constructed prisons, the surety that we need no longer be square pegs in round holes but can fit and belong in God's scheme of things—these are the permanent and legitimate satisfactions of right living for which no amount of pomp and circumstance, no heap of material possessions, could possibly be substitutes. True ambition is not what we thought it was. True ambition

> is the deep desire to live usefully and walk humbly under the grace of God. (Step Twelve TSTT 124-125)
>
> With each passing day of our lives, may every one of us sense more deeply the inner meaning of A.A.'s simple prayer:
>
> > God grant us the serenity to accept the things we cannot change. Courage to change the things we can, And wisdom to know the difference." (Step Twelve TSTT 125)

Alcoholics Anonymous (the "Big Book") is "A.A.'s basic text" and its "central theme" is the "emphasis on a higher power". As "an all-purpose guide for anyone having problems working the Twelve Steps", the Big Book's main object is 'to enable [the reader] to find a Power greater than [himself] which will solve [his] problem," and that it is "spiritual as well as moral." (Big Book, page 45) Chapter Four of the "Big Book", entitled "We Agnostics," provides:

> . . . If, when you honestly want to, you find you cannot quit entirely, or if when drinking, you have little control over the amount you take, you are probably an alcoholic. If that be the case, you may be suffering from an illness which only a spiritual experience will conquer.
>
> To one who feels he is an atheist or agnostic such an experience seems impossible, but to continue as he is means disaster, especially if he is an alcoholic of the hopeless variety. To be doomed to an alcoholic death or to live on a spiritual basis are not always easy alternatives to face.

> But it isn't so difficult. About half our original fellowship were exactly of that type. At first some of us tried to avoid the issue, hoping against hope we were not true alcoholics. But after a while we had to face the fact that we must find a spiritual basis of life—or else. Perhaps it is going to be that way with you. But cheer up, something like half of us thought we were atheists or agnostics. Our experience shows that you need not be disconcerted.

A preliminary step in the A.A. program requires the participant to admit the existence "of a Creative Intelligence, a Spirit of the Universe underlying the totality of things. . ." (Big Book, page 46). Once this step is taken, the participant is to be possessed with a new sense of "power and direction." The program provides that "[a]t the start, this was all [the participant] needed to commence spiritual growth, to effect [his] first conscious relation with God as [he] understood Him." (Big Book, page 47) As soon as the participant can say that "he does believe, or is willing to believe, . . .[the program] emphatically assures him that he is on his way" and that a "wonderfully effective spiritual structure can be built." (Big Book, page 47)

The ASAT Program Operations Manual sets forth in detail the role that the Twelve Steps plays in the entire ASAT curriculum administered throughout the State's prison system, including respondent's prison. The Manual's statement of the ASAT "philosophy" begins:

> The 12-Step approach to recovery is a set of principles which teach an individual how to build a life based on sobriety. By working the 12 suggested steps, a person achieves a clear, honest view of relationships with others and a realistic understanding of himself/herself. The 12

> Steps of A.A. act as a guide which provide the tools to build a new way of life without the use of alcohol and/or drugs, one day at a time. An outline of these steps is provided in the ASAT Curriculum, Attachment E.[4]

(ASAT Program Operations Manual, page 6—Respondent's Appendix, page 2a)

Section VIII of the ASAT Manual, entitled, "Program Concept", describes the "Treatment Services". Under the subheading, "Alcohol and Drug Education and Counseling", there appears the following:

> ASAT staff will develop a curriculum reflecting week, topic, and educational information that will be delivered. Audio/visual material, lectures, and group discussions will be used. *The curriculum will be based on the "Twelve Step" approach to recovery.*

(ASAT Program Operations Manual, page 25—Respondent's Appendix, page 4a, emphasis added)

DOCS' statement of the ASAT "Goals and Objectives" begins by setting forth its "Mission Statement" which includes focusing on the prisoner's continued participation in self-help groups based on the Twelve-Step approach. (ASAT Program Operations Manual, page 4—Respondent's Appendix, page 1a) The Manual states that weekly participation in self-help groups such as A.A. is mandatory in the formal ASAT program. (ASAT Program Operations Manual, page 27—Respondent's Appendix,

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[4]The "ASAT Program Curriculum" ("Attachment E" of the Manual) outlines *all* of the Twelve Steps.

page 6a) Under the Manual's "Overview of the Self-Help Programs" there is a section which reads, "Group counseling focus: Continued exploration of feelings regarding disease concept and self-help programs." Under this heading there is a list which contains, among others, the topics, "Review of the 12 steps", "what it means to work the steps", "Treatment emphasis - Steps 1, 2, 3", and "Ongoing stepwork - disease concept". (Attachment "E" of the ASAT Program Operations Manual, pages 2-3—Respondent's Appendix, pages 9a)

The curriculum portion of the ASAT Manual explains that the group counseling sessions focus on such topics as "Surrender to powerlessness", "Seeking and finding your higher power", "Barriers to faith", "From fear to faith" and "Prayer and meditation". (Attachment "E" of the ASAT Program Operations Manual, pages 4-17—Respondent's Appendix, pages 10a-24a) The audio-visual aids and handouts given to ASAT participants include such titles as "Accepting Powerlessness", "What is Spirituality?", "Step Two: A Promise of Hope", "The Will of God" and "Our Father".

Thus the New York Court of Appeals had ample basis for finding that "[t]he ASAT Manual not only fails to disclaim and disassociate the prison system's drug and alcohol addiction treatment program from A.A.'s religious approach to combating these afflictions, but actually embraces and reinforces worship in the A.A. mold." Petitioners' Appendix, page 12a. The ASAT program itself, and not just the AA self-help groups that the

participating prisoners are required to attend, is grounded in the Twelve Steps[5]—a process to sobriety that is explicitly guided by traditionally religious concepts and explicitly directed toward a conversion of the participant to a reliance upon God.

REASONS FOR DENYING THE WRIT

NEW YORK'S REQUIREMENT THAT PRISONERS PARTICIPATE IN THE TWELVE STEP PROGRAM CONSTITUTES GOVERNMENT MANDATED RELIGIOUS PRACTICE IN VIOLATION OF THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT

I

"Whether the key word is 'endorsement', 'favoritism' or 'promotion', the essential principle remains the same. The Establishment Clause at the very least prohibits government from *appearing* to take a position on questions of religious belief . . ." *County of Allegheny v American Civil Liberties Union*, 492 U.S. 573, 593-594 (1989)(emphasis added).

Petitioners' exclusive employment of its Twelve Step ASAT program, coupled with their conditioning of prison opportunities, such as conjugal visits, upon an inmate's participation in

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[5] Petitioners make a perplexing attempt to rewrite the decision below as though it only pertains to ASAT's requiring inmates to participate in AA self-help groups. Petition, page 3 n. 2. Whatever "portion of the program" might be petitioners' "focus here", and whatever might be their present "periodic review and revision" of the ASAT program, *Id.*, the fact remains that it was the ASAT program as it existed, and the fact that it was the State's exclusive treatment program, which formed the basis of the Court of Appeals' decision.

that program, makes it *appear*, "at the very least," that the State has "take[n] a position on questions of religious belief." *Id.* There is no intellectually honest way to deny this fact.[6] Indeed, the New York Court of Appeals observed that the A.A. literature "demonstrates beyond peradventure that doctrinally and as actually practiced in the 12-step methodology, adherence to the A.A. fellowship entails engagement in religious activity and religious proselytization." Petitioner's Appendix, 11a-12a. As long as the State relies exclusively upon religiously proselytizing language, the objective *appearance* of government-endorsed religiosity will be undeniable.

Even if this Court were to go so far as to accept petitioners' suggestion that words like "God" and "prayer" and "Him" and "Higher Power" and "spirituality" can be given a neutral or secular "spin" (which, of course, they really can't), the Establishment Clause would still be violated. This is because the First Amendment "forbids" even "subtle departures from neutrality," *Gillette v United States,* 401 U.S. 437, 452 (1971) . . . " *quoted in Church of Lukumi Babalu Aye v Hialeah,* 113 S.Ct. 2217, 2227 (1993), and there is nothing at all subtle about the State's departure from neutrality in this record. The religious indoctrination inherent in a departmental policy of using the Twelve Steps is not erased, or even minimized, simply by labeling it "spiritual" or "therapeutic".

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[6] Ironically, petitioners' own counselor, Robert Cunningham, admitted that a fair reading of the 12-Steps leads to the conclusion that it is religious: "Based solely on my reading of the 12 Steps as well as the other materials submitted by Mr. Griffin in support of his grievance, I concluded that the program had a religious foundation." (Cunningham Affidavit, par. 11 —Respondent's Appendix, page 27a)

II

Petitioners' heavy reliance upon A.A.'s conclusory, self-serving disclaimer that the Twelve Step process is not "religious",[7] not only has been rejected by the New York Court of Appeals, it is presently being *uniformly* rejected in the federal courts.

In *Kerr v Farrey*, 95 F.3d 472, 497-480 (7th Cir. 1996) the Seventh Circuit Court of Appeals, which stated its agreement with the Opinion below, rejected the argument that the "program escaped the 'religious' label because the twelve steps used phrases like 'God, as we understood Him,' and because the warden indicated that the concept of God could include the non-religious idea of willpower within the individual." The Seventh Circuit observed that "[a] straightforward reading of the twelve steps shows clearly that the steps are based on the monotheistic

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[7] Petitioners also suggest that because A.A. purportedly does not embrace one particular religion it does not violate the First Amendment. But even assuming that the A.A. requirement does include the principle of non-affiliation, this still would not remove it from the scope of the Establishment Clause. In *Abington v Schempp*, 374 U.S. at 216, the Supreme Court observed how it "has rejected unequivocally the contention that the Establishment Clause forbids only governmental preference of one religion over another." *Abington*, 374 U.S. at 216. See, also, *Grand Rapids School Dist. v Ball*, 473 US 373, 382, where this Court observed that the government must "maintain a course of neutrality among religions, and between religion and nonreligion. . . "

idea of a single God or Supreme Being."[8] *Id.* See, also, *O'Connor v State of Cal.*, 855 F.Supp. 303, 307-308 (C.D.Cal. 1994) which, prior to *Kerr*, drew the same conclusion that A.A., for purposes of First Amendment analysis, is not only religious, but specifically "monotheistic" in its basic principles:

> Spirituality is a central part of the Alcoholics Anonymous philosophy, and the program contains religious overtones. While A.A. is not a "religion"—various faiths may all participate without renouncing their religious convictions—a review of the "Big Book of Alcoholics Anonymous" reveals that it is founded on monotheistic principles.

The Second Circuit Court of Appeals in *Warner v Orange County Department of Probation*, 95 F.3d 202, 213 (2nd Cir. 1996), as did the Seventh Circuit in *Kerr*, expressed its agreement with the Opinion below and stated that it had "little difficulty concluding that the constitutional line was crossed" by the government's endorsement of, and requirement of participation in, the Twelve Step program. Addressing the disclaimer argument now being propounded to this Court by petitioners, and specifically that argument's reliance upon *Stafford v*

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[8] The Seventh Circuit went on to point out that the phrase "God, as we understood Him," stressed by petitioners to show the so-called flexibility of the "God" concept, really works against the State, since the phrase refers to God as "Him". *Kerr*, 95 F.3d at 480. Thus it is no longer true, as petitioners originally asserted, that no court other than the Court below has held that the 12 Steps method is religious on its face. See, Petition, 8, 10.

Harrison, 766 F.Supp. 1014 (D.Kan. 1991),[9] the Second Circuit in *Warner* stated that

> *Stafford* involved a mandatory prison-based substance abuse program, structured around the principles of A.A. The court upheld the program, arguing that A.A.'s notions of a "higher power" and "God" were sufficiently flexible and non-denominational that the program could not be said to constitute a "religion." This is a misapplication of First Amendment doctrine, which prohibits coerced participation in religious exercise of any variety for its favoritism of religion over non-religion. We decline to follow that case, which has been criticized for misreading relevant Supreme Court precedent.[10]

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[9]The *Stafford* Court, pointing to the disclaimer in the "Big Book", held that "[w]hile the spiritual nature of Alcoholics Anonymous cannot be denied, the court is not persuaded this program is a religion." 766 F.Supp. at 1016. The holding in *Jones v Smid*, (4-89-CV-20857), the unpublished 1993 Southern District of Iowa decision also cited in the instant petition, expressly adopted the reasoning in *Stafford*.

[10]In the *Warner* District Court decision, the reasoning in *Stafford* was found faulty and rejected as follows:

> The case upon which Defendant relies for the proposition that A.A. is not a religious organization, *Stafford v Harrison*, 766 F.Supp. 1014 (D.Kan. 1991), draws its legal justification from a misapplication of Justice Douglas' concurring opinion in *U.S. v. Seeger*, 380 U.S. 163 (1965). *Stafford* finds that "the belief in a Supreme Being 'cannot be sustained as a distinguishing characteristic of religion.'" *Staff rd*, 766 F.Supp. at 1017. The passage from *Seeger* cited by the *Stafford* court stands not for the proposition that reference to a Supreme Being does not make something a 'religion', but for the proposition that belief in a Supreme Being is not a

(continued...)

Stafford was also rejected in *Scarpino v Grosshiem,* 852 F.Supp. 798, 804 (S.D.Iowa 1994) which described the reliance upon A.A.'s disclaimer as "dubious."

Also refusing to follow *Stafford* and adopt the sort of selective and misleading references to the A.A. literature that can be found in the instant petition, the District Court in *O'Connor* took the following quote as revealing:

> This is the how and why of it. First of all, we had to quit playing God. It didn't work. Next, we decided that hereafter in this drama of life, God was going to be our Director. He is the Principal; we are His agents. He is the Father, and we are His children. Most good ideas are simple, and his concept was the keystone of the new and triumphant arch through which we passed to freedom . . .

O'Connor, 855 F.Supp. at 307, n. 6.

III

The primary problem with petitioners' argument is that it would guarantee the State's ability to circumvent the Establishment Clause in every challenge to state-endorsed religious

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(...continued)

prerequisite for a religion. In fact, Douglas specifically notes Hinduism and Buddhism as religions which do not include a concept of a Supreme Being. As a result, we base our analysis upon decisions of the Supreme Court rather than upon *Stafford.*

Warner v Orange County Department of Probation, 827 F.Supp. at 267.

indoctrination. If States were permitted to use traditionally religious terms simply on their claim that such terms are not to be taken literally, but as mere metaphorical tokens, then accountability under the First Amendment would be impossible. See, e.g., *Robinson v City of Edmond*, 68 F.3d 1226 (10th Cir. 1995), which rejected a request to go behind the objective[11] significance of a traditionally religious symbol. The Tenth Circuit rightly observed that an argument which would discard the objective standard "could always 'trump' the Establishment Clause." *Id.*

Petitioners' argument, with its proffered interpretation of "God" and "prayer" as state-of-the-art terms within the treatment industry, similarly asks that the objective standard be discarded and that plainly religious language not be taken at face value. At the very least, however, the First Amendment must forbid government from using language conventionally understood as religious as a tool for social engineering. Otherwise, any governmental entity, such as New York's DOCS, which has created and now operates a religiously proselytizing program, always would be able to "trump" the Establishment Clause by simply saying that when it uses the word "God" it doesn't mean God, and when it tells people to "pray to God" it really is telling them to do something non-religious.

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[11]Instead, the Tenth Circuit applied the objective standard enunciated in *County of Allegheny v American Civil Liberties Union* (492 U.S. 573) and looked "only to the average receiver of the government communication or average observer of the government action." *Robinson v City of Edmond, supra.*

This is also why petitioners' "secular purpose" argument fails. If this Court were to approve the State's exclusive endorsement of the Twelve Steps on the theory that working them is good for certain types of people because "God" has a therapeutic, non-religious significance, the variety of opportunities to "trump the Establishment Clause" would be virtually limitless. Nothing then could stop the State from requiring the working of the Twelve Steps as a condition of, say, child visitation, or public or government-regulated employment, or even a student's right to remain in public school. As the New York Court of Appeals correctly observed, "[a]dopting a balancing approach here would be unprecedented and raise serious implications beyond the prison context." Petitioner's Appendix, 26a.[12]

IV

Petitioners' effort to psychologize, and thereby secularize, the Twelve Steps—by deconstructing the words "God", "Him",

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[12]The Court of Appeals properly refused to follow *Boyd v Coughlin*, 914 F Supp 828 (N.D.N.Y 1996) which is cited at pages 10 and 11 of the instant petition. *Boyd* misused precedent by citing *O'Lone v Estate of Shabazz*, 482 U.S. 342; *Turner v Safley*, 482 U.S. 78; and *Pell v. Procunier*, 417 U.S. 817, 822-23. These are not Establishment Clause cases; they involve personal, rather than public, constitutional rights. In *O'Lone*, for example, a case involving a claim under the Free Exercise Clause, the Supreme Court held that a balancing is permitted between an inmate's personal right to engage in his religion's rituals and practices and the State's penological and administrative interests. Obviously, there are some religious practices that a prison simply cannot accommodate for reasons of security, order and economy. However, such balancing between personal freedoms and penological objectives has absolutely nothing to do with the Establishment Clause. Under the Establishment Clause, State institutional objectives may never justify State religious indoctrination.

"prayer" and "spiritual awakening" as mere metaphors—also has the effect of degrading[13] traditional religious beliefs and insulting those who hold them. This is because petitioners are telling this Court (and the citizens of New York) that the word "God" has no objective referent and that, despite one's religious convictions, "God" and "prayer" are nothing more than useful slogans in carrying out the State's therapeutic objectives.[14]

What petitioners are doing is precisely what the Establishment Clause was intended to prevent. They are perverting religious language to serve the purposes of the State.

The exhortations contained in the Twelve Steps become no less repugnant to the Establishment Clause simply because the prisoner might (theoretically) be told that he can interpret them in non-religious terms. The fact that a person might be able to maintain his atheism (or his particular form of religious conviction) in the face of indoctrination administered in A.A.'s anthropomorphic, monotheistic terms does not make his state-mandated exposure to such indoctrination constitutional. The Twelve Step requirement still violates the second and third prongs of the *Lemon v Kurtzman* (403 U.S. 602) test in that a

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[13]See, *Engel v Vitale* (370 U.S. 421), where this Court stated that a "union of government and religion tends to destroy government and degrade religion."

[14] *Compare*, Bertrand Russell, *Can Religion Cure Our Troubles?*, in *The Basic Writing of Bertrand Russell*, Egner & Dennon, Eds., Simon & Schuster, 1961, at page 600: "I can respect the men who argue that religion is true and therefore ought to be believed, but I can only feel profound moral reprobation for those who say that religion ought to be believed because it is useful, and that to ask whether it is true is a waste of time."

principal or primary effect of requiring acceptance of the A.A. doctrine advances religion, and at a minimum fosters an excessive, and unnecessary,[15] entanglement with religion.

Petitioners argue that the specific references to "God" and "Him" can somehow be ignored and that there is nothing wrong with the State methodically inducing prisoners to understand their problems in "spiritual" terms and to surrender their wills to a spiritual "Higher Power". Apart from the unintelligibility of their spiritual-but-secular "Higher Power", petitioners are making the constitutionally erroneous assumption that there is nothing wrong with the State dictating the terms in which human existence is to be understood or in asserting the existence of such entities as "a Spirit of the Universe underlying the totality of things." As this Court has made clear, matters such as "one's own concept of existence, of meaning, of the universe, and of the mystery of human life"—matters that "define the attributes of personhood"—must never be "formed under compulsion of the State." *Planned Parenthood of Southeastern Pennsylvania v. Casey,* 505 U.S. 833, 112 S.Ct. 2791, 2807 (1992).[16] A prisoner, like any other person,[17] must be permitted to maintain the integrity of his intellect, for such integrity is

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[15]The religious entanglement is "unnecessary" in the sense that the State can achieve the goal of alcohol rehabilitation without coercing individuals to practice religion. There are secular alternatives to A.A.

[16]See, also, *Lee v Weisman*, 112 S.Ct. at 2665, stating: "There is no doubt that attempts to aid religion through government coercion jeopardize freedom of conscience. Even subtle pressure diminishes the right of each individual to choose voluntarily what to believe."

[17] "A human being does not cease to be human because the human being is a prisoner of the state." *Ward v Walsh*, 1 F.3d 873, 876 (9th Cir. 1993) cert den 114 S.Ct. 1297.

essential to the preservation of human dignity and, thus, a free society.[18]

V

Petitioners miscast the holding below when they argue that the record is inadequate in that "[t]he proscription against state endorsement of religion was never meant to apply to a mere possibility that a 12-step self-help group might conduct their meetings with a religious flavor." Petition, page 19. DOCS' Establishment Clause violation does not occur solely within the confines of the mandated self-help group meetings. It is the religious foundation of the entire ASAT program, together with petitioners' exclusive endorsement of it and their coercion of respondent to participate in it, which violates the First Amendment.

As the Court below properly observed, a reading of the ASAT Manual shows that at "the heart of the [ASAT] program" is "the A.A. Twelve Step manifesto itself and inmate participation in the group sessions conducted by A.A. and N.A. volunteers utilizing the A.A. modus operandi." Petitioner's Appendix, 9a. The ASAT Manual was created by the State, not A.A. It is the State, not A.A. volunteers, that has been directing inmates to attend counseling where the "focus" is "Surrender to powerlessness", "Seeking and finding your higher power", "Barriers to faith", "From fear to faith" and "Prayer and meditation". It is the State which has inmates listen to audio tapes such as "Excuses,

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[18] "Freedom of thought, which includes freedom of religious belief, is basic in a society of free men. * * * It embraces the right to maintain theories of life and of death and of the hereafter which are rank heresy to the followers of the orthodox faiths." *Board of Educ. v Barnette*, 319 U.S. 624, 640-642.

Honesty, Humility, Spiritual Side" and "The Will of God", and to watch video tapes such as "Our Father".

Coerced[19] participation in a program based upon the Twelve Steps is considerably more than mere "exposure to religious ideas" (Petition, page 7) or the "mere use of the word 'God'", as petitioners have chosen to downplay it (Petition, page 7). It is overt religious indoctrination.[20] To analogize it to the *Marsh v Chambers* (463 U.S. 783) chaplain's prayer (Petition, page 16), and to distinguish *Lee v Weisman* (505 U.S. 577) on the theory that adult inmates are not "susceptible" children (Petition, page 16), ignores the fact that the very premise of the ASAT program is that the participant *is* susceptible. Otherwise, the program makes no sense at all.

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[19] The fact that respondent had the option of forgoing participation in the Family Reunion Program is of no moment. Once the State provides such a program, it must do so in a manner that does not infringe upon constitutional rights. See, in addition to the authorities cited in the decision below, *Board of Education v Grumet*, 114 S.Ct. at 2497, where Justice Souter, expressing the view of the majority, stated that the Religion Clauses of the Constitution "all speak with one voice on this point: Absent the most unusual circumstances, one's religion ought not affect one's legal rights or duties or benefits."

[20] The insidious nature of the program's method of indoctrination comes to the fore through ASAT Counselor Cohen's remark that "the resistance displayed by [respondent] is a typical symptom of addiction, requiring treatment." (Petitioners' Appendix, page 91a) Cohen's assumption that respondent is "an inmate in denial," and her warning that "[w]e must be careful to prevent inmates from believing they can change the system in order to avoid changing themselves," provide a vivid picture of what respondent, and other prisoners, are being subjected to during the A.A. meetings they are forced to attend.

In *Engel v Vitale,* 370 U.S. 421 (1962) this Court held that New York's *recommendation* to the local school boards that they adopt the practice of daily prayer[21] violated the Establishment Clause: "We think that by using its public school system to encourage recitation of the Regent's prayer, the State of New York has adopted a practice wholly inconsistent with the Establishment Clause." *Engel,* 370 U.S. at 424. It is equally clear that by using its prison system to encourage working the Twelve Steps, without providing a secular alternative, the State of New York again adopted a practice wholly inconsistent with the Establishment Clause.

CONCLUSION

The psychological pressure put upon respondent to accept the A.A. beliefs is the very sort of direct, overt compulsion to reject his atheism (or agnosticism) which the drafters of the First Amendment found to be intolerable. Respondent submits that, for purposes of finding an Establishment Clause violation, it is sufficient that the program he is being required to participate in is built upon a "spiritual" foundation described in theistic terms —a fact which respondents do not dispute.

The government involvement with religious activity in this case resulted in state-sponsored and state-mandated religious exercise. Petitioners used the threat of withholding an institutional program to force inmates to participate in the Twelve Step program. They attempted to indoctrinate inmates to "[make] a decision to turn [their] will[s] and [their] lives over to the care of God", to "admit to God . . . the exact nature of [their]

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[21] "This daily procedure was adopted on the recommendation of the State Board of Regents." *Engel,* 370 U.S. at 422.

wrongs", to be "entirely ready to have God remove all these defects of character", to [h]umbly [ask] Him to remove all of their shortcomings, to seek "through prayer and meditation to improve [their] conscious contact[s] with God", as they underst[an]d Him, praying only for knowledge of His will for [them] and the power to carry that out", and "[h]aving had a spiritual awakening as a result of these steps," to try "to carry this message to alcoholics, and to practice these principles in all their affairs." (The Twelve Steps, Steps 3, 5, 6, 7, 11 & 12) All this was imposed under the threat that if they refused to submit, they would not receive the benefit of the Family Reunion Program. This constitutes a glaring, ongoing violation of the constitutional prohibitions against promoting religion and the excessive entanglement between church and state.

Accordingly, the petition should be denied.

Dated: Middletown, New York
November 22, 1996

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APPENDIX A—Portions of ASAT Program Operations Manual

New York State Department of Correctional Services

ALCOHOL AND SUBSTANCE ABUSE TREATMENT (ASAT) PROGRAM OPERATIONS MANUAL

July 1991

(4) III. GOALS AND OBJECTIVES

A. Mission Statement

To prepare chemically dependent inmates for return to the community and to reduce recidivism, the Department of Correctional Services ASAT Program assists participants by providing education and counseling focused on continued abstinence from all mood altering substances and participation in self-help groups based on the "Twelve-Step" approach.

B. Performance Goals

1. Identify in reception centers those inmates demonstrating a need for alcohol and substance abuse treatment services through a standardized alcohol and substance abuse classification procedure.

2. Provide orientation to the general inmate population, sensitizing inmates to the problems of alcohol and substance abuse.

3. Develop individualized treatment plans through which the inmate's needs are assessed and treatment goals are established; regularly evaluate progress in treatment.

4. Provide educational seminars through the use of audio/visual aids, lectures and discussions as well as group counseling and other appropriate supportive services.

5. Encourage the participant to actively pursue academic, vocational, and ancillary support services which will contribute to the development of appropriate skills and coping mechanisms necessary to maintain a drug-free lifestyle upon release.

6. Encourage inmate participation in self-help groups during and after formal ASAT participation.

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(6) IV. PROGRAM DESCRIPTION

A. Philosophy

1. 12-Step Approach

The 12-Step approach to recovery is a set of principles which teach an individual how to build a life based on sobriety. By working the 12 suggested steps, a person achieves a clear, honest view of relationships with others and a realistic understanding of himself/herself. The 12 steps of AA act as a guide which provide the tools to build a new way of life without the use of alcohol and/or drugs, one day at a time. An outline of these steps is provided in the ASAT Curriculum, Attachment E.

2. Behavior and Attitudinal Change

The basic treatment approach is an integrated program of education and counseling. This will assist the inmate in arriving at behavior change leading toward pro-social coping skills and productive life goals without the need for mood altering chemicals. This therapeutic approach is used by individual staff members in the context of bringing about beneficial behavior change in an inmate and leading him/her toward positive and productive goals.

One of the main foundations of the program is the ongoing building of an appropriate treatment atmosphere based on trust. A treatment atmosphere involves both staff and inmates. Communication fosters trust; trust in turn facilitates communication. The staff as individuals and as a group serve as role models and function as a team.

Another foundation of the program is individual responsibility. The individual inmate is basically responsible for whatever happens to him/her and for dealing with it. Change comes from within and change is possible. The program and staff offer conditions which will assist an inmate in bringing about change; however, the inmate is the cause of change in his/her own life.

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(25) VIII. PROGRAM CONTENT

A. Treatment Services

These activities will focus on providing the information and therapy necessary for participants to identify their addiction, understand the recovery process, and develop skills and coping mechanisms necessary to maintain commitment to a drug-free lifestyle.

1. Alcohol and Drug Education and Counseling

ASAT staff will develop a curriculum reflecting week, topic, and educational information that will be delivered. Audio/video material, lectures, and group discussions will be used. The curriculum will be based on the "Twelve Step" approach to recovery.

Attachment E includes an outline of the program curriculum that must be used.

The following educational and counseling activities will be included:

a. Audio/Video Presentations:

Tapes, films, and videos will be sued on a consistent basis to introduce the theme for each phase of the curriculum. These will illustrate various issues regarding addiction and recovery. One hour per week will be allotted for this activity. The use of audio/video material must comply with Directive #4555, "Video Production Programs and Procedure."

Audio tapes, e.g. the Hazelden tapes (Albums 1-12) may be used. Participants will listen individually or in groups to particular topics on addiction. They will complete assignments which will indicate a basic understanding of the topics explained in each tape.

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(27) 2. Family Services

Because the family is an integral part of the treatment process, family services will be an ongoing focus. Families will be strongly encouraged to participate in:

a. Orientation sessions which will outline the course of treatment recommended for the participant, and the role families or significant others play in the recovery process.

b. Seminars which sensitize families or significant others to addiction and the process for recovery.

c. Family counseling groups which will focus on individual needs and the dynamics of the interpersonal interactions which are demonstrated in the participant's particular family situation.

Times may be arranged at the convenience of the ASAT staff and the individual family. The Correction Counselor (Family Services) may assist the ASAT staff in providing these services.

B. Self-Help Group Participation (AA/NA)

ASAT is an educational and counseling experience which introduces and prepares inmates to identify chemical addiction and the process of recovery. It reinforces total abstinence and the need to participate in self-help groups. Therefore, weekly participation in self-help groups such as AA or NA is mandatory in the formal ASAT Program.

One hour of self-help group participation per week will be credited toward the ASAT Program hours requirement as noted in Section VIII-B. Self-help groups such as Gamblers Anonymous, Smokers Anonymous, etc. do not fulfill this requirement.

It should be noted that self-help groups such as AA and NA are not part of the formal ASAT Program but are an important adjunct to it. These groups must be separated from the ASAT Program and not

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(1) Attachment E

ASAT PROGRAM CURRICULUM

The following are topics that need to be covered over 26 weeks. Since ASAT is not an educational program but is therapeutic in nature, the choice of topics should depend on group make-up and related issues and not necessarily in the order described below. Segments of certain topics may be re-discussed in conjunction with new topics. Flexibility is required to ensure genuine therapy.

ASAT Orientation

ASAT Orientation should be delivered on a weekly basis to all new participants of the program.

Goal: To ensure a complete understanding of the program; how it works, expectations regarding behaviors, the treatment process, discharge criteria. Group process begins.

Group counseling focus: Getting to know each other

Lecture: Group Dynamics

- Describe and discuss overall program to include goals, expectations, physical plant
- Review schedule
- Review of rules (facility and ASAT); discharge criteria and process will be clearly defined sign
- Review of tools
- Review of "chain of command"
- Assignment of house jobs
- Orientation to group counseling; distribute group rules

Suggested Video: How To Sabotage Your Treatment
Continued Acts of Sabotage

Suggested Handout: How To Get The Most Out Of Group Therapy—Hazelden

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(2) Overview of Addiction

Goal: To assist the inmate to understand and personalize the disease concept in relation to their personal drug and alcohol history.

Group counseling focus: Begin personal review of drug and alcohol history

Lecture: Psychopharmacology—Overview of the physiological effects of depressants (including alcohol), stimulants, narcotics, hallucinogens. Emphasis on crack/cocaine.

- Treatment approaches
- Disease concept—need for total abstinence
- Signs and symptoms
- Review of progression
- Cross-addiction, dual addiction, substitution
- Synergy
- Other compulsive behaviors—power-based—sex, anorexia, bulimia, exercise, gambling, spending

Suggested Video: Brother Earl's Street Smart Series
"Street Talk"

Suggested Video: My Fifth Superbowl, Carl Eller
The Disease of Alcoholism,
David Ohlmes

Suggested Handout: "CD-The Disease", Jellinek Chart
Alcoholism/Addiction Checklist
A Look at Cross-Addiction
The Promises of Sobriety

Suggested Audio: Action, Alcoholism
Sin or Disease?

Overview of Self-Help Programs

Goal: Both the structure and function of self-help programs and its relationship to the disease model will be explored.

Group counseling focus: Continued exploration of feelings regarding disease concept and self-help programs.

(3)— Purpose and function—support, growth, change of lifestyle and belonging
— Review of various programs and their focus
— Review of the 12 steps
— What it means to work the steps
— Treatment emphasis—Steps 1,2,3
— Ongoing step work—disease concept
— Can you commit to yourself?
— Program tools—sponsorship, slogan, meetings
— Types of meetings
— "Model meeting" using outside speakers

Suggested Video: Earnie Larsen Series:
Working a Program

Suggested Handout: The Twelve Steps

(4)

BARRIERS TO SURRENDER

Step One

We admitted we were powerless over our addictions that our lives had become unmanageable

Goal: To understand and identify denial.

Group counseling focus: Utilize the group to identify denial. Group will begin to understand the concept of "responsible concern."

— Compliance vs. surrender
— Honesty/motives and feelings
— Denial: unconscious and necessary
— The many faces of denial: types and reasons
— Understanding the process: facing grief

Suggested Video: Brother Earl's Street Smart Series
"What Problem?"

Suggested Handout: Dealing with Denial—Hazelden
Step-One Worksheet—Hazelden
Alcoholism: A Merry-Go-Round Named Denial—Hazelden
Changing Faulty Thinking Hazelden
Grief: A Basic Reaction of Alcoholism—Hazelden

Step One Continued

We admitted we were powerless over our addictions that our lives had become unmanageable

Goal: To assist in understanding the paradox of willpower in relation to continued use. Personal identification of the first step as relinquishing control—admitting loss of control.

Group counseling focus: To assist the inmate in identifying personal beliefs about control of chemicals and to begin to identify the paradox of recovery.

(5)— Total abstinence from mood altering substances
— Discussion of powerlessness—disease of will
— Power and control—avoidance for continued use
— Loss of control
— Surrender to powerlessness
— Acceptance of Disease
— Feelings
— From powerlessness to empowerment
— Identifying unmanageability

Suggested Video: Earnie Larsen: Recovery, Part I

Suggested Handout: Step-One Worksheet—Hazelden
Accepting Powerlessness—Hazelden

Suggested Audio: Weakness in Strength—Hazelden

Step Two

Came to believe that a power greater than ourselves could restore us to sanity

Goal: To explore issues of higher power and trust as it relates to surrender.

Group counseling focus: Personal examination of beliefs, feelings and attitudes related to spirituality.

— Surrendering control to WHAT? **Trust**
— Seeking and finding your higher power
— AA and NA as a higher power
— Willingness
— Spirituality vs. religion
— Defining "insane" behavior and attitudes

Suggested Video: Earnie Larsen: Seeking and Finding Your Higher Power

Suggested Handout: What is Spirituality?
Step Two: A Promise of Hope

Suggested Audio: Excuses, Honesty, Humility, Spiritual Side—Hazelden
The Will of God—Hazelden

(6) **Step Three**

Made a decision to turn our will and our lives over to the care of God, as we understood God

Goal: To explore the concepts and barriers in accepting a power beyond self. Exploration of self-centeredness.

Group counseling focus: To explore issues of fear (feelings) and its relationship to chemical use.

— The action step—making a change
— Barriers to faith
— From fear to faith
— Turning it over to the program—relinquishing control
— Sponsorship
— Prayer and meditation

Suggested Video: Brother Earl's Street Smart Series
"Our Father"

Steps Four and Five

Made a searching and fearless moral inventory of ourselves

Admitted to God, to ourselves and to another human being the exact nature of our wrongs

Goal: To understand the purpose of self-searching as the means to which new vision is brought to life.

Group counseling focus: To explore fear, guilt, shame, anger, and resentments.

— Taking an honest look
— Risktaking—a necessary step to freedom
— How unresolved anger and resentments block recovery
— Secrets (Guilt)
— Forgiveness (as a process)
(7)— Willingness to trust in another human being as a healing process
— Trusting the trustworthy
— We don't have to do it alone—Sponsorship

Suggested Video: Earnie Larsen Series:
Unresolved Anger and How Resentment Blocks Recovery
Earnier Larsen Series:
Doing a Fourth and Fifth Step

Suggested Handout: New Fourth Step Guide—Hazelden
Grandiosity—Hazelden
Perfectionism—Hazelden

(8)

RELAPSE

Steps Six and Seven

We're entirely ready to have God remove all these defects of character

Humbly asked God to remove our shortcomings

Goal: To assist in understanding the process of relapse. To identify the need to take a daily inventory of relapse dynamics.

Group focus: Personal exploration of forms of control and the underlying feelings.

Lecture: Relapse

- Overview of the relapse process—moving into denial (control)
- Signs and Symptoms
- Use of other drugs or compulsive behaviors
- Daily relapse inventory
- Triggers—people, places, things
- Physical relapse indicators—various drugs and related withdrawal e.g. protracted withdrawal

Suggested Video: Staying Sober, Keeping Straight
Earnie Larsen Series: Relapse

Suggested Handout: Relapse And The Addict—Hazelden
The Dry Drunk Syndrome—Hazelden

(9)

OVERVIEW OF FAMILY DYNAMICS

Step Eight

Made a list of all persons we had harmed and became willing to make amends to them all

Goal: The concept of addiction as a family disease will be explored. Issues such as enabling and family roles will be discussed.

Group focus: To explore personal family dynamics.

- Explore family roles—denial
- Co-Dependency—definition and characteristics
- Keeping the family in balance—dysfunction
- Exploring the issues of shame, secrets, guilt
- Family goal—no change—keeping each other sick
- Family as a relapse dynamic
- Family recovery—treatment and self-help groups
- Tying in the steps 8 & 9—to explore issues of self-forgiveness

Suggested Video: Bradshaw On The Family (10 part)
Earnie Larsen Series: Family

Suggested Handout: Family Denial—Hazelden
Recovery For The Whole Family
Hazelden

(10) ADULT CHILDREN OF ALCOHOLISM/ADDICTION

Step Nine

Made direct amends to such people wherever possible except when to do so would injure them or others

Goal: To explore the impact of addiction on children. To understand the concept of generational alcoholism/addiction. To reduce personal blame and begin to see all family behaviors as part of the disease.

Group focus: Personal exploration of the impact of living in dysfunctional families **and** to assist the individual in indentifying generational issues.

- Impact on the children/characteristics
- Controlling someone else—co-dependency revisited
- Lack of personal boundaries
- Abandonment as a core issue—emotional and physical
- Shame-based behavior and feelings—begin to explore family violence
- Unmet dependency needs
- Who am I? Selfhood at what cost?
- Replaying the scripts in adult intimate relationships
- Exposing the family secrets
- Exploring the issue of "amends"
- ACOA Meetings—when, where?
- Al-Anon for the family
- Using ACOA issues to deny addiction

Suggested Video: Shame and Addiction, John Bradshaw
Soft Is the Heart of A Child

Suggested Handout: Guide For The Family of the Alcoholic—Hazelden
Recovery For The Whole Family
Hazelden

(11) ANGER/VIOLENCE

Step 10

Continued to take personal inventory and when we were wrong promptly admitted it

Goal: To explore issued of violence. The behavior and feeling related to violence should be tied into disease concept (control) and the first 3 steps.

Group focus: To explore personal history and beliefs about violence (to self and others)

- Exploration of feelings
- Intellect vs. feelings—staying in the here and now
- Image vs. reality (denial)
- Aggression as a control issue (power vs. powerlessness)
- Exploring underlying feelings e.g. hurt, abandonment
- What is my behavior saying about my recovery?
- Avoiding powerlessness
- Men and Rage
- Anger is OK—to review anger as another emotion (not bad or good)
- Alternatives to violence
- Values clarification seminar
- Using anger as a signal to take personal action (change what I can)

Family Violence—A Chain To Be Broken

Goal: To understand and integrate family violence, family dynamics and disease concept.

Group Counseling Focus: To explore generational family history.

— Exploration of the overt and covert issues of violence, e.g. physical and/or emotional abuse and neglect
(12)—Incest
— Powerlessness—turning to drugs and alcohol
— Rage, depression and shame—to explore denial of feelings; turning it inward
— The process of healing—dealing with the feelings; exposing family secrets
— Exploration of Post Traumatic Stress Disorder
— Violent relationships—reliving the past
— Parenting oneself—resolving the past and learning to self-care

Suggested Video: Family Violence in America:
Conspiracy of Silence
A Chain To Be Broken

(13) PARENTING

Step Eleven

Sought through prayer and meditation to improve our conscious contact with God as we understand God, praying only for knowledge of God's will and the power to carry that out

Goal: To assist in understanding the relationship between disease and its effects on the next generation. Viewing parenting in terms of recovery behavior.

Group Counseling Focus:

- Role modeling—breaking the addiction cycle
- What children need
- Exploring and healing the guilt
- How to meet the needs of the child and yourself; exploring the need to take care of yourself in order to take care of others; boundaries
- The importance of going to meetings and having a support group
- Discipline/consistency
- Limit-setting with love (detachment)—how not to enable your child.
- Teaching accountability
- Nutrition
- Fetal Alcohol Syndrome

Suggested Video: Coming From The Storm (3 part)

Suggested Handout: Fetal Alcohol Syndrome (DAAA)

(14)

SEX AND SEXUALITY

Goal: To explore sex, sexuality, role definition and its relationship to addiction.

Group counseling focus: To explore and define the various roles related to being male and female and its relationship to addiction. To assist in redefining self to enhance recovery.

- Healing the wounds of incest
- What does it mean to be a man? Old tapes, new ideas
- The impact of addiction on sexuality
- Being a sober man—redefining ourselves
- Sex addiction—using relationships and sex to avoid pain
- Sex and power
- To explore what it means to be alone
- The difference between sex and love
- Overview of various forms of contraception (Planned Parenthood)
- AIDS (AIDS Institute)

Suggested Video: Sex and Recovery for Females
Pride
Sex and Recovery for Men
Pride
Healing the Wounds of Incest

Suggested Handout: Sex Addiction: Denial, Acceptance, Return to Sanity

Workshop: AIDS Institute on AIDS

(15)

INTIMACY

Goal: To understand the dynamics of healthy intimacy. The individual shall begin to integrate addiction issues and ACOA issues as barriers to a healthy self and relationships.

Group counseling focus: Personal exploration of the impact of growing up in a dysfunctional family in relation to present relationships (lovers, spouses, children).

- Self-focus: the foundation of intimacy
- Learned distance
- Distance and pursuit—the dance of intimacy
- Exploring present relationships
- Exploring past relationships with a view towards establishing healthy intimacy
- The challenge of change
- Boundaries—defining self—taking risks
- Saying what we mean, meaning what we say—FAITH
- Being close—fears and barriers (Would you love me if you knew who I really was?)

Suggested Handout: Distance and Pursuer, Fogarty

(16)

AFTERCARE

Step Twelve

Having had a spiritual awakening as the result of these Steps, we tried to carry this message to others, and to practice these principles in all our affairs

Goal: To evaluate needs, priorities and develop plans.

Group counseling focus: Personal exploration of the feelings related to leaving treatment (and prison)

- Looking backwards/looking forward
- Defining needs (not wants)—recovery, shelter, employment, money, family
- Establishing priorities
- Taking responsibility
- Exploring community support—begin the process of establishing support after release. The inmate shall begin to make concrete plans and establish contacts in the community.
- Begin contact with DASH volunteers—obtaining a sponsor
- "Practice these principles in all our affairs"
- Expectations as a relapse dynamic

Review/Learning To Say Good-Bye

Closure should be addressed with each participant in the last few weeks of treatment. This should be integrated into the regular ASAT Program e.g. closure in group. Continuity of care planning may be addressed on an individual basis or in groups identified for this purpose.

Goal: ASAT participant, along with peers, will evaluate progress, identifying issues which need to be addressed.

(17)**Group Counseling Focus:** Participants will share feelings about leaving and bring closure to program, staff and participants.

— Closure and grief
— Exploring healthy ways of leaving
— Hope—becoming a whole person

APPENDIX B—Affidavit of Robert Cunningham Sworn to August 3, 1993

STATE OF NEW YORK SUPREME COURT
COUNTY OF ULSTER

IN THE MATTER OF THE APPLICATION OF

DAVID GRIFFIN, 68A0237

Petitioner,

For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules

AFFIDAVIT

RJI # 55-93-00981

-against-

Justice Canfield

THOMAS A. COUGHLIN III, Commissioner,
N.Y.S. Dept. of Correctional Services;
LOUIS F. MANN, Superintendent,
Shawangunk Correctional Facility,

Respondents.

STATE OF NEW YORK)
) ss.:
COUNTY OF ULSTER)

ROBERT CUNNINGHAM, being duly sworn, deposes and says:

1. I am employed as a Senior Correction Counselor at Shawangunk Correctional Facility.

2. As a Senior Correction Counselor my responsibilities include staff supervision and program coordination for a close supervision unit. In addition, I am chairperson of the Special Housing Unit Review Committee, Chairperson of the Temporary Release Program, and facility coordinator for the earned eligibility program.

3. I do not directly oversee the ASAT program at Shawangunk Correctional Facility.

4. I was one of two DOCS employees who was a member of the Inmate Grievance Resolution Committee that addressed the grievance filed by inmate David Griffin, which alleged that the ASAT program (2)violated his first amendment rights. A copy of the grievance, and the Committee's response thereto is attached hereto as Exhibit A.

5. My response to the grievance, contained in Exhibit A, states in part that "At this time the facility does not offer a substance abuse program (therapeutic) without a religious background."

6. The purpose of this affidavit is to clarify the basis for the aforementioned statement.

7. In reviewing Mr. Griffin's grievance, the members of the committee, including myself, reviewed the materials submitted by Mr. Griffin in support of his grievance.

8. Mr. Griffin attached a copy of a document which sets forth "The Twelve Steps" and "The Twelve Traditions". A copy of that document is attached hereto as Exhibit B.

9. The "twelve steps" outlined in Exhibit B, are those followed by the AA program, which is separate and distinct from the ASAT program.

10. While both programs are available to inmates at this facility, the ASAT was developed and is administered by the Department of Correctional Services, while the AA program is administered by persons associated with AA who are not employed by the Department of Correctional Services.

11. Based solely on my reading of the "twelve steps" as well as the other materials submitted by Mr. Griffin in support of his grievance, I concluded that the program had a religious foundation.

(3) 12. At that time, I did not have any independent, first hand knowledge that the ASAT program at Shawangunk Correctional Facility was conducted without a religious foundation. The ASAT program coordinator at this facility has since confirmed this to be fact.

s/Robert Cunningham
ROBERT CUNNINGHAM

Sworn to before me this
3 day of August, 1993

s/Donna M. Hunt
Notary Public

DONNA M. HUNT
Notary Public, State of New York
Registration #01HU4809238
Qualified in Orange County
Commission Expires March 30, 1994

No. 96-372

Supreme Court, U.S.
FILED
DEC 5 1996

IN THE

Supreme Court of the United States

October Term, 1996

THOMAS A. COUGHLIN, III, as Commissioner of N.Y.S. Department of Correctional Services, and LOUIS F. MANN, as Superintendent of Shawangunk Correctional Facility,

Petitioners,

against

DAVID GRIFFIN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

REPLY BRIEF IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

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The petitioners reply to two points raised by respondent in his brief in opposition to our petition. The petitioners first wish to clarify the issue for which we seek review by this Court. In a second point, petitioners dispute the respondent's premise that the resolution of the question presented in our petition is controlled by the literature first published by Alcoholics Anonymous during its formative years.

ARGUMENT

The brunt of respondent's brief in opposition to our petition addresses the Alcohol and Substance Abuse Treatment (ASAT) program as operated by the Department of Correctional Services (DOCS). Respondent attaches an appendix consisting of parts of the ASAT manual, including the curriculum, which is currently undergoing a revision. We amplify here what we have said in footnote 2 on page 3 of our petition, that we are not asking this Court to review the ASAT curriculum or the ASAT program as it existed at the time it was before the New York Court of Appeals. Rather than "rewrit[ing] the decision below as though it only pertains to ASAT's requiring inmates to participate in AA self-help groups" (Resp's br at 16, n.5), we have narrowed the issue upon which we seek certiorari to the portion of the decision declaring that a State may not, under the Establishment Clause, refer inmates to self-help groups that use the 12-step method as part of its substance abuse treatment program. In other words, we are not challenging that portion of the decision below which disapproved of the ASAT curriculum itself.

The second and final point is that respondent errs in basing his argument that the State has violated his rights under the Establishment Clause solely on the literature first published by AA during its formative years in the 1930s through the 1950s.[1] What he and the New York Court of Appeals have failed to

---

[1] *Alcoholics Anonymous*, Alcoholics Anonymous World Services, Inc. (3d ed 1976) was first published in 1939 and *Twelve Steps and Twelve Traditions*, Alcoholics Anonymous World Services, Inc., (13th ed 1983) in 1952. Subsequent editions of *Alcoholics Anonymous* have been published, but the portion describing the 12-step program has been left intact. While there have been many printings of *Twelve Steps and Twelve Traditions*, it does not appear to have been revised.

acknowledge is that the 12 steps have been modernized over the last 40 to 60 years and are now subject to a much broader, and in some cases, more secular interpretation. The theistic language quoted by the respondent in his brief is from the central texts of AA. Yet, those passages no longer present an exclusive interpretation of the 12 steps.

For example, in Nakken, J., "Keep it Simple—Step 2," a publication distributed by Hazelden for the Bronx Municipal Hospital Center Comprehensive Alcoholism Treatment Center, Outpatient Department (attached to our petition for certiorari at 133a *et seq.*), step two is described as follows:

> Step Two turns off some of us because it sounds religious. We may be afraid the A.A. program says we have to believe in God. We may not believe in God.
>
> * * *
>
> Perhaps we have spiritual beliefs or no beliefs at all, and we don't want to be brainwashed.
>
> Relax. You don't have to believe in God, Buddha, or the Great Spirit. Step Two suggests we find something to believe in that can help us recover. (139a).

The publication then asks questions designed to enable the individual to find a "higher power." It says nothing about a god or any other religious concept. Rather, it suggests finding "someone who knows what needs to be done and how to do it and cares about us enough to put a lot of work into us." (142a).

> We want a Higher Power who knows all about chemical dependency and recovery. We want a Higher Power who

> knows as much as possible about us. This is what we mean by a Power who is *Higher.* When it comes to what we need, we are going to the expert.
>
> * * *
>
> We can probably think of a number of persons or things that fit on the list above. Maybe one of them is the right Higher Power for us, or even more than one.

(142a-143a).

Even the ASAT curriculum contained in the manual attached to respondent's brief in opposition, while no longer directly in issue, is an example of how the 12 steps could work in a secular fashion with the deletion primarily of the step headings. For instance, the ASAT curriculum outline for step 11 lists its goal under this step as, "[t]o assist in understanding the relationship between disease and its effects on the next generation. Viewing parenting in terms of recovery behavior." The topics covered include role modeling —breaking the addiction cycle, what children need, discipline/consistency, nutrition and Fetal Alcohol Syndrome. (Respondent's appendix at 20a).

Therefore, reliance only on the original AA texts is misleading and results in the sweeping indictment of an effective substance treatment tool as a religious exercise, without regard to its purpose, its modern application and its sensitivity to an individual's freedom of belief or non-belief and, in this case, without consideration of the particular 12-step meetings which a prisoner might be asked to attend.

Conclusion

For the reasons stated in this brief and in our Petition for a Writ of Certiorari, the Petition should be granted.

Dated: Albany, New York
December 5, 1996

DENNIS C. VACCO
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State of New York

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